

No. 12544

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United States  
Court of Appeals  
for the Ninth Circuit.

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MATANUSKA VALLEY FARMERS COOPER-  
ATING ASSOCIATION, a Corporation,

Appellant,

vs.

C. R. MONAGHAN,

Appellee.

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Transcript of Record  
In Two Volumes

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Volume II  
(Pages 335 to 604)

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**FILED**

Appeal from the District Court, OCT 9 - 1950  
Territory of Alaska,  
Third Division

**PAUL P. O'BRIEN,  
CLERK**



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ROLAND SNODGRASS

being first duly sworn, testified for and in behalf of the plaintiff as follows:

Direct Examination

By Mr. Grigsby:

Q. State your name?

A. Roland Snodgrass.

Q. Are you an officer or a member of the Board of Directors of the defendant corporation?

A. I am not at the present time.

Q. Were you at one time?           A. Yes.

Q. What year?

A. Well, I was a director from—during 1941, '42—

Q. Just a little louder?

A. I was a director during '41, 1942—

The Court: Mr. Grigsby, if you will stand back there maybe the witness will talk louder.

Mr. Grigsby: That hasn't been my experience, your Honor.

The Court: Let us try it.

The Witness: I was a director during 1941, 1942, 1943—until November, 1944.

Mr. Grigsby: Now, during those years have you been a member of this cooperative association?

A. Yes.

Q. Have you been engaged in business as a dairy-man?           A. Yes.

(Testimony of Roland Snodgrass.)

Q. Did you sign one of these contracts that is in evidence?      A. Yes.

Q. And have you sold milk to the co-op?

A. Every year.

Q. Every year?      A. During those years.

Q. Did you ever in any of those years when you sold and delivered milk to the defendant corporation sell it at a fixed price that you were to ultimately get for your milk so sold and delivered?

A. Yes, it is my opinion that I did every year.

Q. What is that?      A. I did every year.

Q. At a fixed——?      A. At a fixed price.

Q. A fixed final price?

A. In some cases it became final and in some cases it did not become final.

Q. But did you ever agree with the co-op at the beginning of any fiscal year for what ultimate price you would sell your milk—flat figure? Now, that's easy to answer.      A. Yes, I did.

Q. All right. Every year?

A. I'll tell you what I did if it will help.

Q. What's that?

A. The first year I agreed to sell at a fixed, flat price.

Q. Then how about the second year?

A. All right, the second year there was no agreement made; they simply raised the price and we went on. There was no new agreement. The first year I agreed to sell at a certain price.

Q. All right, now, haven't you every year, since

(Testimony of Roland Snodgrass.)

'42, delivered your milk and received certain payments upon delivery, or——?      A. Yes.

Q. On the total deliveries for each bimonthly period?      A. That's right.

Q. And then been paid additional sums for that milk subsequent [155] to the audit?

A. That's right.

Q. That is true, isn't it?      A. That is true.

Q. That was true of '44?

A. That was true in '44.

Q. That was true in '43?      A. That is right.

Q. And it was true of '42?

A. That's correct.

Q. But in '41 you sold for a fixed, flat price?

A. No, I received an additional payment in 1941.

Q. You got additional payments in '41 also?

A. That's right.

Q. All right, now, in the milk you sold in '45, did you sell your milk for a flat ultimate price?

A. In 1945 I sold no milk.

Q. You were working in the office?

A. That's right.

Q. Did anybody sell any milk at a flat, fixed ultimate price in '45?

A. You mean did they agree to sell it, or did they sell it?

Q. Did they agree to sell it for so much per hundred?

A. There was no agreement that I know of to that effect.

Q. Now, isn't it a fact that they sold it, every

(Testimony of Roland Snodgrass.)

one of them, with an arrangement to be paid according to the terms and conditions of Paragraph (7)?

A. In my opinion the answer has to be "no" because they agreed to sell it in conformance with the terms of the marketing contract.

Q. That is what I am talking about.

A. That is not all the marketing contract—that is Paragraph (7).

Q. All right, what else in the marketing contract could control the price?

A. All right, now, you are speaking of price alone? [156]

Q. Of what they were to get for their milk.

A. All right, Paragraph (8)—

Q. All right, I will read you Paragraph (8):

"The Association is hereby authorized to process or manufacture into changed or new products the products delivered hereunder and pay the Producer as provided for in Paragraph 7,"

which is the scheme of payment,

"from the proceeds from resale of the changed or new products or at its discretion to pay a flat delivery price therefor to the Producer as full payment thereof and thereafter process or manufacture it into changed or new products on its own account and at its own expense \* \* \*"

Now, isn't that option to pay a flat delivery price clearly applicable only to goods bought to be re-



(Testimony of Roland Snodgrass.)

processed? Can you put any other construction on it?

A. Yes, I will tell you what my construction of that is.

Q. I would like——

A. Goods to be changed or processed—it uses both words—or manufactured—it uses that word also.

Q. Yes, sir. Well, for instance, milk could set until cream rose to the top and then you would skim the cream off and that would be a change. Is that what you mean?

A. Let's not use that for an example. That isn't what I mean. That could happen. That would be a normal procedure with milk. I would say the milk that [157] is pasteurized is processed — it is a changed product.

Q. And you think that is contemplated by that paragraph?

A. I don't see any reason why not.

Q. Well now, Mr. Snodgrass, where a product goes into a real process, such as making a part of milk into ice cream——

A. That, I believe, is what I mean by manufactured.

Q. Yes, well, that is—processed or manufactured; and where it has to be mixed with other materials, as in the creamery down there, where they buy milk from the farmers for that purpose and have to commingle it with other products purchased from non-

(Testimony of Roland Snodgrass.)

members of the Association, it is quite difficult to apportion, and has been. What proportion of the product goes into the final article, and under those conditions don't you think that Paragraph (8) was put into this contract so as to solve that difficulty? And they say here, your milk is to be mixed with all this other supplies from the Outside, so we will give you a flat price. So, isn't that a common sense interpretation?           A. No, not——

Q. You mean, when milk up here is pasteurized—is that——?

A. No, that is a changed product.

Q. Are you perfectly honest about that?

A. I am perfectly honest about that.

Q. However, you never did agree to take a flat price for your milk, at any time for your milk sold in '42, 3 or 4?

A. No such agreement. I made such an agreement to clear the record in [158] 1940 to take a flat price.

Q. For that year?           A. For that year.

Q. But you always have received additional payments after the audit?

A. In 1941, 42, 43 and 44.

Q. Yes, sir. And there has always been two per cent deducted?

A. No, I think that has been done since about August, 1943.

Q. All right, since '43 that two per cent has been deducted; and for the year 1944, after they had charged off all the operating expenses and the in-

(Testimony of Roland Snodgrass.)

direct overhead, and had a balance of profit left, you got your proportion of it, didn't you?

A. That's right.

Mr. Grigsby: That's all.

Mr. Davis: Mr. Snodgrass, in addition to being a member of the co-op and a director during the years that you have been——

Mr. Grigsby: If your Honor please, I am informed by my clients that they got home last night after leaving here immediately and didn't get their milking done until after nine o'clock, and up until that time hadn't had time to eat, and had to get up at five o'clock this morning to get back. And I have asked Mr. Davis to conclude by at least half past four, or now, and resume in the morning.

Mr. Davis: That is agreeable to me, your Honor. It seems aparent we can't finish tomorrow.

The Court: No, and we not only can not finish tomorrow, but the [159] Court is bound to leave Sunday morning to hold a term elsewhere, and my present disposition is to adjourn now and continue the case over until the first of April. Now, I know the necessity, or the desirability, of having the matter decided at the earliest possible date, but even if we work until midnight tomorrow night, we will not conclude the case and this is a case of such grave importance that I hope that counsel will give me the benefit of their thoughts on the subject in argument. I do not want counsel to waive argument in this case—it is too important.

Mr. Grigsby: Your Honor, I anticipated that and

(Testimony of Roland Snodgrass.)

I hoped to get the evidence in so that your Honor could review it, but I didn't hope that we could finish the argument, particularly when opposing counsel is Mr. Davis, but I want to——

Mr. Davis: Well, your Honor, since it is 25 after four I think we might as well quit now.

The Court: I think we may as well quit now.

Mr. Grigsby: If your Honor please, I anticipate as long as we can't finish this case it will ultimately be decided just practically as quick if it is adjourned until April 1.

The Court: All right. . . . That will be the order, not hearing any objection, the trial is continued until one o'clock on April 1, 1947; and if counsel have any lists of adjudicated cases which bear upon the question, I should be glad to have them submit those lists now—not briefs or arguments, but simply lists of, perhaps, similar cases that have been decided [160] by other courts.

Mr. Grigsby: There never has been, your Honor.

Mr. Davis: I have been unable to find any case directly in point. On the other hand, I have two books on co-op law which have been furnished me, and if you like I will be glad to turn it over.

The Court: You had beter keep it because if I use them I will have to take them to Cordova.

Mr. Davis: I don't think I will need them.

The Court: Very well, I will be glad to take them and read them during the sessions at Cordova and Seward.

Mr. Davis: Your Honor, Mr. Stock has just in-

(Testimony of Roland Snodgrass.)

formed me he is going Outside next week and he might not be back April 1. Now, in the event he should not get back, we would like to ask for a continuance because from our standpoint he is a very important witness. He will try to get back April 1, but in the event he isn't, we would like to continue the case.

The Court: He will not be gone much longer than that?

Mr. Davis: He intends to be back April 1.

Mr. Grigsby: Maybe a day or two?

Mr. Davis: Yes, if he can't get back, maybe a week— not longer than a week.

(At 4:30 o'clock, p.m., trial of the cause was continued until April 1, 1947.)

(On Tuesday, April 1, 1947, the matter was again continued [161] and on Monday, April 7, 1947, the following further proceedings were had, at 10:00 o'clock, a.m.)

The Court: Do counsel wish to have this trial suspended at four o'clock this afternoon?

Mr. Grigsby: What was your Honor's statement?

The Court: On the former days when testimony was taken in this case, we suspended before five o'clock. Is it the desire of counsel today to suspend at four or 4:30?

Mr. Grigsby: Yes, your Honor, as soon as possible.

(Testimony of Roland Snodgrass.)

The Court: At four o'clock?

Mr. Grigsby: Yes, at four o'clock.

The Court: Very well, I wish to know at this time because there may be something else to take up.

This is a continuation of the trial of C. R. Monaghan against Matanuska Valley Farmers Cooperating Association. You may call a witness, Mr. Grigsby.

Mr. Grigsby: Will the stenographer——

Mr. Davis: I had not cross-examined Mr. Snodgrass.

The Court: You may proceed, Mr. Davis.

Mr. Grigsby: I don't remember exactly where I left off, but you can proceed with cross-examination. It might suggest something to me.

Mr. Davis: It probably will.

### Cross-Examination

By Mr. Davis: [162]

Q. Now, Mr. Snodgrass, to try to kind of get in mind what we were talking about when we quit at the time the trial was suspended, when was it that you became a member of the Matanuska Valley Farmers Cooperating Association?

A. I believe it was in 1937.

Q. And have you been a member ever since that time?

A. Well, I was suspended for a little over a year during which time I wasn't producing agricultural products.

(Testimony of Roland Snodgrass.)

Q. And was that during part of the time when you were manager? A. Yes.

Q. And during what period were you manager of the Matanuska Valley Farmers Cooperating Association?

A. I believe it was from approximately January, 1944, until February 5, 1946.

Q. From January '44 until February '46?

A. I believe so, yes.

Q. Now, were you a director of the Association prior to the time that you became manager?

A. I had been a director for approximately three years.

Q. And when did you begin, do you remember?

A. As director?

Q. Yes.

A. Well, I think—I couldn't be too sure, but I believe it was in the early part of the year 1941.

Q. And how long, then, did you continue as director? A. Well, until January, 1944.

Q. At the time you took over as manager?

A. Yes.

Q. Now, were you the general manager of the co-op?

A. I [163] believe—yes, that was the title.

Q. Under the direction and supervision of the Board of Directors? A. That is right.

Q. Who was the manager that proceeded you?

A. Mr. L. C. Stock.

Q. And who is the manager that succeeded you?

A. E. E. Harris.

(Testimony of Roland Snodgrass.)

Q. And is Mr. Harris still the general manager?

A. No, Mr. Harris has not been manager for a matter of a few months.

Q. Who is the present general manager?

A. At the present time there is no general manager. They have Mr. Eckert, I believe, as acting manager.

Q. And Mr. Eckert is a member of the Board at this time, is he?           A. Yes.

Q. Now, Mr. Snodgrass, I think you told Mr. Grigsby that you are in business as a dairyman?

A. Yes.

Q. Are you one of the larger dairymen?

A. Yes, slightly above average, anyhow. I have in some years been the largest.

Q. Now, during the time when your membership was suspended by reason of the fact that you were the general manager, what became of your dairy herd during that time?

A. My father ran the place for those two years.

Q. And does that include the time in question here, 1945?           A. Yes.

Q. Your father, then, was managing your herd in 1945?           A. That's [164] right.

Q. Have you made any study, Mr. Snodgrass, as to the percentage of the consumer's dollar that goes to the milk producers under the payment which is made by the co-op? When I say payment, now, I am talking about the payment that is made every month, leaving out of consideration any overages that might



(Testimony of Roland Snodgrass.)

be paid at the end of a year. Have you made such a study?

A. I have never made a very thorough study of that except to note—except that each year I would compare to see approximately what percentage of the consumer's dollar was being paid to the dairy-men, the consumer's dollar being the retail price of the milk—not what the Association receives for it.

Q. Now, do you know—do you have a pretty fair idea of what percentage of the consumer's dollar the milk producer has received—with the exception of the years 1940 and 1941—of the first advance payment, so that we won't have to argue about that?

A. It has been approximately 50% of the consumer's dollar.

Q. And if further payments were made later in the year or at the end of the year, would that increase that percentage?

A. Yes, it has increased it up over 60% in some years.

Q. You say, then, that over all the years, since 1940 or '41, it has been approximately 50%?

A. Yes. In 1940 it was—it ranged from 35 to 44 per cent.

The Court: What year was that?

The Witness: In 1940. And after 1940—I believe in 1941— [165] from that time on it has been approximately 50 per cent.

Mr. Davis: And that is the advance payment—the advance or the first payment or whatever it may be called that you figured that percentage on?

(Testimony of Roland Snodgrass.)

A. Yes.

Q. And if further payments are made later in the year that percentage increases?

A. That is right.

Q. Later in the year or at the end of the year or whatever the procedure may be? A. Yes.

Q. Now, Mr. Snodgrass, are you pretty well familiar with the operation of co-ops in other places?

A. I wouldn't consider myself very familiar with cooperatives in other places. I have not belonged to them nor been there to study them.

Q. Have you made a study of the percentage of the consumer's dollar that milk producers receive under other co-ops?

A. No, I have very few figures under other co-op setups. The only ones I have are just like the milk market magazines or national markets as a whole.

Q. Well now, have you made a study of those—milk market magazines and that sort of thing?

A. Out of curiosity I have for several years noted all the statistics I would see on that.

Q. And have you done any figuring as to what percentage of the consumer's dollar goes to milk farmers in other places?

A. Well, I have counted instances in text books and occasionally in magazines showing that the range has run from in the low 40's up to around 60 per cent, and in cases of some extremes they may run [166] up higher. I haven't seen those extremes. The average appears to be about 50 per cent.

Q. Now, Mr. Snodgrass, as a member and as a

(Testimony of Roland Snodgrass.)

director and as a manager for part of the time, of the co-op, are you familiar with the way the co-op was run—with the way the payment for the milk was handled over the various years?      A. Yes.

Q. Will you tell the Court, if you know, how the milk men were paid in the year 1945—the year ending November 1, I believe it was, 1945?

A. There is somewhere here a schedule which shows the payment.

Mr. Grigsby: Little louder?

The Witness: I say, there is somewhere here a schedule showing the payments as they were made. I don't have a copy of it with me, but in 1945—

Mr. Davis: New excuse me: Let me get that Exhibit No. 3, I think it is. Handing you Defendant's Exhibit No. 4, is that the schedule you were talking about?

A. Yes, this is the schedule here. In 1945, there were three changes in the price of milk. You see, we have a base price on four per cent butterfat milk. It will be so many dollars a hundred and then there is what is sometimes called the butterfat differential, which is the increase or decrease from that price based upon the test of milk—the increase and the decrease over or below four per cent. The base price in four per cent milk was in April 22—no, I beg your pardon, August 1, 1945—excuse me, may I change the date? From [167] April 22, 1943, until August 1, 1945, which takes in eight months of '45, it was \$6.70 per hundred pounds of four per cent milk; and for each tenth of a per cent above or be-

(Testimony of Roland Snodgrass.)

low four per cent there was a differential in that price of six cents. In other words——

Q. Six cents per what?

A. Per hundred pounds. And then on the same system, the base price on September 1 was increased to \$7.20, but the butterfat differential of six cents per hundred pounds for each tenth of a per cent butterfat above or below four per cent remained the same; and again on September 16, the base price was increased to \$7.70 with the same butterfat differential.

Q. Now, then, Mr. Snodgrass, were further payments then made to the milk farmers?

A. In 1945—that is what we are arguing about—there were no further payments after the payments as indicated here, which were made twice a month.

Q. All right, now, leaving out the word “payment,” did the milk farmers receive additional money for their milk they delivered during the year 1945?

A. No, they did not—just these amounts per hundred pounds of milk.

Q. Now then, going back to the year 1944, was the milk handled the same way in 1944 as it was in 1945?

A. Well now, the handling of the milk, I believe, was pretty much the same.

Q. By “handling” I mean the way the price was figured and all that sort of thing.

A. Well, in 1944, of course, during the [168] entire year the price on milk was—this is to keep out

(Testimony of Roland Snodgrass.)

of that argument—this was the first advance or the price, \$6.20 per hundred of four per cent milk.

Q. Now, at the end, or after the end of 1944—of fiscal 1944—were additional payments made to the milk farmers?

A. There were two additional payments: Both—one, I believe, 20 per cent of the amount previously received, and the other 20 and some fraction of a per cent—23 per cent perhaps.

Q. Now, can you tell the Court how those figures were arrived at?

A. Well, at the end of the fiscal year 1944, we had a profit—that is, the Association as a whole had a profit—

Mr. Grigsby: I can't hear the witness.

The Witness: At the end of the fiscal year 1944, the Association as a whole had a considerable profit.

The Court: Pardon me. Will you speak a little louder? It is hard for me to hear also.

The Witness: At the end of fiscal year 1944, the Association had a considerable profit. This profit was in the accounting procedure broken down to appear that some of what are called "departments" showed a profit and some showed a loss. The creamery was among those showing a high profit. In the distribution of the income of the Association, it was—the attempt is always made to prorate that back to the producers or the consumers in whose department this profit has been made. In other words, if we have a profit we try to put it back—we show, I [169]—well, as it was at the time where I had part to do

(Testimony of Roland Snodgrass.)

with it—at the end of the year, as I said, we had a profit. Among the profit-making units was the combined dairy and creamery. So, whatever percentage of the profit of the Association was made by the combined dairy and creamery, was distributed to the patrons who had earned it on the basis of—well, we say of their patronage: In this case, on the basis of what they had contributed to that profit.

Q. All right, and that turned out to be 20 per cent on one payment and 20 some odd on another?

A. That is right.

Q. To the milk producers?           A. Uh-huh.

Q. Now, Mr. Snodgrass, were the mechanics any different—the mechanics of distribution of the money, any different in the year 1945 from 1944?

A. Well, they would be different inasmuch as they haven't been completed, if they were to be completed on the same basis. First, in 1944, the profit of the Association was some—well, there was approximately \$60,000. In 1945, the profit of the Association was 2800 and some odd dollars. Now, by all previous custom the Board of Directors would figure what percentage of that 2800 had been contributed by the dairy and creamery and then distribute that among the patrons who brought in milk, that is, they would distribute that proportion which their breakdown showed to have been earned on milk. Now, that part hasn't been done and, of course, there is the only difference between the two years so far, except the net [170] amounts are also greatly different.

(Testimony of Roland Snodgrass.)

Q. The big difference, of course, is that in 1944, the Association made a substantial profit and in 1945, it didn't make a substantial profit?

A. That is the big difference.

Q. Now, in the year 1944, Mr. Snodgrass, did all of the so-called departments or units make money?

A. No, there has never been such a year. All of them didn't make money. Those which lost money didn't lose as much as they did in 1945.

Q. Now, how were the shortages made up in the year 1944, on the departments that didn't make money?

A. Well, in the first place, of course—it is almost necessary to use comparison in that case, but I will try to answer. When the profit and loss statement of the Association is made, it shows so many dollars were made——

Mr. Grigsby: Just a minute——

The Court: Just a minute. Mr. Grigsby is still unable to hear you. If you can talk louder it will be a help. Suppose you talk to the rear row back there.

The Witness: Would you repeat the question, please?

Mr. Davis: I think you were talking, Mr. Snodgrass, on how shortages in some departments were covered in the year 1944.

A. Well, in the process of performing the audit of the Association the auditor will generally first come out with the net profit or loss of the Association. When he does, the Association knows it has a certain profit which has been made, or a certain loss

(Testimony of Roland Snodgrass.)

which [171] has been made. Then the auditor will break down the operations somewhat arbitrarily, however, as exactly as he can, into departments, which is in its way a cost accounting procedure, and it will develop that some departments have made money and some have lost money. However, the amount which the Association has made or lost is the one fixed amount and it would have to be assumed that if the Association has made, say, \$5,000, to be quite arbitrary, and one department has made \$10,000, and another has lost \$5,000, that the department which made the \$10,000 would subsidize or support the losing department. Now, that—of course, this breakdown in departments is an arbitrary thing in itself. It is a cost accounting procedure. In fact, it isn't even a cost accounting procedure; it is simply an analysis for the Board and the manager to see which departments are performing satisfactorily and which are not. But the breakdown comes after the general profit and loss statement for the Association is made.

Q. Now, Mr. Snodgrass, was the same procedure used in, for instance, the year 1944 and 1945, at arriving at that figure that you have been talking about?

A. So far as I know the same procedure was used. The same auditor was employed and, I believe—I have no reason to believe that there was any difference in the procedure.

Q. The difference, then, arises in results rather than the procedure?      A. That is right. [172]



(Testimony of Roland Snodgrass.)

Q. The fact that the Association didn't make as much money in 1945 as it did in '44?

A. That is correct.

Q. You were a member of the co-op, I presume, at the time that the co-op took over the buildings and the businesses that had been previously handled by the ARRC?

A. I was a member of the Association, not of the Board, at that time.

Q. Can you give the Court a little bit of background there as to how that was set up to begin with and why you took over the various functions of the ARRC?

A. Well, I can give you my opinion of it. Anyhow, on January 11, 1940—I may tangle myself up badly on this because it is very complicated thing and no one has ever gotten it very straight.

Mr. Grigsby: We object to all this as not within the issues of the case. It has nothing to do with the interpretation of that contract.

Mr. Davis: Your Honor, I figured it might be helpful to your Honor in determining what is to be done about their contract.

The Court: I will hear it; objection is overruled. I don't know that it will be considered in making a decision. You may proceed.

The Witness: Now remember, I was not actively engaged in the operation of the affairs of the Association. I was a member at that time, but not of the Board. On January 11, 1940, the Association purchased from the Alaska Rural Rehabilitation

(Testimony of Roland Snodgrass.)

Corporation the physical plant at Palmer. That included the buildings, [173] the land and the inventories in the different businesses. The reason that that was done was because the Corporation had stated that they could no longer finance the operation of that part of the plant which was intended to be the cooperative setup.

Mr. Davis: To keep the record straight, who do you mean by "the Corporation"?

A. The Alaska Aural Rehabilitation Corporation.

Q. And it is a general distinction in the valley, isn't it, the Corporation being the ARRC and the Co-op being the Matanuska Valley Farmers Cooperating Association?

A. They are now very distinct.

Q. Yes. Go ahead.

A. Well, at the time this was made there were a number of the directors of the Association were against taking it over because of the fact that it appeared to be a losing business and it wasn't felt that the income necessary to carry on this operation could be taken from the farmers. There was actually almost no alternative, or there was no conceivable alternative to taking it over because the Corporation—the Alaska Rural Rehabilitation Corporation—said they could no longer finance it. Some businesses were making a profit. At that time I believe it was the garage, the Trading Post and possibly, the warehouse, and all other so-called departments were losing money. After that had hap-

(Testimony of Roland Snodgrass.)

pened—well, perhaps simultaneously with that, the Farm Security Administration—the present Farm Home Administration—loaned the Association \$300,000 with which it first bought the stock in trade, the inventories and the different businesses from the Corporation. For the physical plant, that is the land and the buildings as separate from the inventories and trade, the Corporation accepted the note of the Association for \$200,000; and from that time on the Association operated the business as a cooperative. Its first major step, probably, was in starting to enlarge the creamery and dairy by buying cottage cheese making and ice cream making equipment. In the year—about the middle of the year 1940 the Association bought out the East Side Dairy in Anchorage and started in the market milk business in Anchorage.

Mf. Grigsby: What year?

The Witness: 1940. For the first—well, this is going backwards a little. As I said, this is rather confusing, but in the first three months of operation was on a sort of probational agreement to see if the Association could successfully operate the affairs of the Association, and so it at first turned over to the Association, under the management of Mr. Stock, the three units handling farmers' produce, the Meat Department, the dairy and creamery, or at that time it was only creamery, and the Produce Department, handling vegetables. And the Corporation offered—well it did, actually, to pay \$7,000 a month to the cooperative to take care of

(Testimony of Roland Snodgrass.)

the cash deficit which would occur based upon their experience in operating those three units. At the end of the—that is, that cash deficit was their estimate based upon their previous operation, and they paid that to the Association. At the end of, I believe, three months—although I am not too certain—there was considerable amount of that was refunded to the Corporation. It was not used. Then during the next few months one unit or two units at a time were turned over to the operation of the Association, and then on January—that was during the year 1939—on January 11, 1940, the Association took over the operation of the entire Civic Center or Cooperative setup there at Palmer.

Now, from that time on, it maintained approximately the same bookkeeping system as the Corporation had originally, and it has with the exception of having closed out two units, the cannery and the power house—the cannery is closed and the power house is no longer maintained as a unit, but simply as the cost of heating and lighting the plant—it has maintained approximately the same bookkeeping system, which gives first the profit and loss of the Association and then the breakdown into departments to see where the operation is satisfactory or where it is not satisfactory.

Mr. Davis: Now, Mr. Snodgrass, you mentioned a note of \$200,000 to the ARRC given by the Association or the co-op?

A. That is right.

Q. Do you know as to whether or not any means

(Testimony of Roland Snodgrass.)

have been taken toward retiring that note?

A. To the best of my knowledge, [176] there has not been a reserve set up for that note. Its due date is not for 20-some years yet. The Association does not have a reserve set up for the retirement of that note. The only provisions are in the distribution of profits of the Association as it has not distributed in cash any profits on consumer units earned since the year 1938. In place of that it has issued notes to the patrons of the Association and the consumer units with a due date of 10 years, I believe, which tend to build up the—well, it tends to build up the ratio of current assets to current indebtedness and by maintaining a rather high ratio of current assets to current indebtedness there is, figuratively, room for a reserve, or that takes the place of a reserve to retire the Farm Security note. However—or not the Farm Security note—the Corporation note.

Q. The Farm Security note, Mr. Snodgrass, is being paid so much each year?

A. That is right. It is being paid. But this—the notes which appear in the hands of the patrons of the Association deferring that payment gives the Association, possibly—it is a questionable point—it gives the Association the wherewithal ultimately to pay off the Farm Security note. However—

The Court: Not the Farm Security—

The Witness: No, I beg your pardon, the Corporation note. Now, there is one big difference that would be made if a reserve were set up. If a reserve were set up, it would reduce the shown profits by some \$6,000 a year, and I believe if it has ever

(Testimony of Roland Snodgrass.)

been thoroughly hashed out—which I somehow doubt—the Association would follow the auditor's suggestion on the matter, but if it has been discussed with the auditor, I believe the Association has preferred to postpone the establishment of that reserve and then accumulate the reserve at a faster rate so that during the time that the project is growing and getting on an economic basis larger returns can be made to the patrons in the early years.

Mr. Davis: Now, did you say during the time the ARRC was operating this project that there were losses in several of these departments?

A. Well, on the basis of the figures accumulated for the payment of dividends—the dividends accumulated appeared from the Trading Post, the garage, during one or perhaps two years, the warehouse and then the rentals of the barber shop and the laundry—I believe on that basis—I haven't seen their books, but on that basis, since there were no profits accumulated and no profits paid from the other units, the other units must have been running in the red. I know for sure Produce, the creamery and Meat Department were running in the red because they said so when they offered to pay the expected losses on those departments at the rate of \$7,000 a month.

Q. In looking over this standard contract between the cooperative Association and the growers, I notice it is provided [178] in there that there shall be a management and sales agency of the co-op. Can you tell the Court who was contem-

(Testimony of Roland Snodgrass.)

plated to be the management and sales agency at the time this contract was drawn?

A. Well, the management and sales agency was the term given to the Alaska Rural Rehabilitation Corporation in a contract which the Association made when it was first incorporated. It simply, at the time it was incorporated, entered into an agreement with the Alaska Rural Rehabilitation Corporation by which that Corporation became its management and sales agency.

Q. And when the thing is mentioned in the contract you are talking about the ARRC?

A. That is correct. Now, that was correct up until January 11, 1940, at which time that agreement was terminated.

Q. And at that time, then, the co-op became its own management and sales agency?

A. That is right.

Q. Now, Mr. Snodgrass, at the end of the year, if the co-op had shown a profit, as you have testified to here, dividends were declared to the producers according to the goods they had produced, if I understood you correctly?

A. Well, if the Association had a profit.

Mr. Grigsby: We object to the question as leading—putting word “dividends” into the witness’s mouth.

The Court: Overruled. You may answer.

The Witness: It has been the custom of the Association, if it had a profit at the end of its year’s operation, to seek to find [179] which class of pro-

(Testimony of Roland Snodgrass.)

ducers or consumers, or which classes of producers or consumers contributed to that profit, and then as best possible, to pay them either in cash or in notes or certificates of equity, the amounts earned on their business. There has been a second policy corollary on that, which has been as follows: The profits earned on consumer goods, or in the consumer units—the warehouse, the garage and the Trading Post—have been set up on 10-year certificates of equity or notes of the Association. The profits earned on farm products have been paid back in cash at the end of each year with, of course, the exception of 1945 which is in dispute.

Q. Now, when you talk about profits, is that the profit of any one unit or the profit of the Association you are talking about?

A. No, it is the profit of the Association which is distributed in that manner.

Q. As a whole?

A. And the part which the unit profit plays is in the distribution: it is necessary to find which class of consumers or producers have contributed to that profit of the Association.

The Court: May I intervene there? I didn't understand, or I do not understand, one thing which you mention in your testimony as to certificates, apparently, that were certificates of indebtedness, I assume, that were given by the cooperating association to certain consumers or certain producers. Will you explain that? [180]



(Testimony of Roland Snodgrass.)

The Witness: Well, we have two classes of certificates of indebtedness or certificates of equity which the Association issues. I will have to make it as two illustrations. One is this: With regard to that two percent of the gross sales price which the Association can deduct from the payments for farmers' produce, the Association has issued certificates of indebtedness which is a provision to pay that back after a stated time; and with the second illustration—would be that should it be found that the Trading Post, or the warehouse, had contributed to the profit of the Association as a whole, the amount of \$10,000, then the Association would determine what percentage of that profit had been made on the business of each member. That is a requirement by law, so that it can provide for the repayment of that profit to that member. Now, the necessity for repayment of the profit on the consumer business is not pressed.

The Court: It is what?

The Witness: It isn't pressing. The law doesn't say we have to pay it back at the end of the year or at any time. We simply must make the provision to pay it back. So the Association has done this: Inasmuch as it has a total indebtedness of something less than \$500,000, it has issued certificates of equity for the profits on their consumer units.

Mr. Davis: Explain to the Court what you mean by consumer units.

A. Well, the consumer units are the warehouse,

(Testimony of Roland Snodgrass.)

Trading Post, garage, or any unit which buys from some source other than [181] the farmers for resale to the farmers as consumers.

The Court: What about this Meat Department, is that a consumer unit?

The Witness: The Meat Department has at times been operated as a producer and consumer unit, and it has been operated at times as two departments—a retail and wholesale meat, as we call it—wholesale, buying from any source, and selling to the consumer. The retail would be a consumer unit; and the wholesale unit is one that buys from the farmers and sells to other persons—to the retail department or the restaurant or to the general public.

The Court: I think I understand.

Mr. Davis: And when you talk about consumer units—I think you said consumer units—the profits had been distributed in the form of certificates of equity? A. Yes.

Q. And the producer units, as distinguished from the consumer units, the profit has been distributed in money?

A. The profit has been distributed in money, that is right.

Q. Now, then, to go back to my original question here: In the past has the profit that has been distributed been the profit of any particular department or the profit of the Association as a whole?

(Testimony of Roland Snodgrass.)

A. Well, any profits which have ever been distributed are the profits of the Association as a whole. There has never——

Q. There never—— [182]

The Court: You interrupted the witness, Mr. Davis. Had you finished?

The Witness: No, he started another question.

Mr. Davis: Well, you distributed the profits of the Association on the basis of the goods which the producer has turned over to the Association, is that correct?

Mr. Grigsby: Objected to as leading and already answered. It has already been **stated**.

Mr. Davis: This is Mr. Grigsby's witness, not mine.

Mr. Grigsby: All right; withdraw the objection.

The Court: I think he is as much witness for one party as he is for the other.

Mr. Davis: I will agree to that.

The Court: I think the witness has already answered, but if he cares to make further explanation he may.

Mr. Davis: Withdraw the question. To your knowledge, so far as you know, Mr. Snodgrass, are there any funds of the Association from which these milk producers might be paid additional money for 1945?

Mr. Grigsby: Objected to as immaterial, whether the Association can pay or not.

The Court: Overruled.

The Witness: Well, may I ask what you mean

(Testimony of Roland Snodgrass.)

by funds? Theoretically, of course, the Association could liquidate inventory and pay them in cash.

Mr. Davis: Well, possibly I should say "reserve" rather than liquidate—

A. As far as reserves are concerned, I have no idea where it would come from.

Q. Looking over the balance sheet, the profit and loss statement for the year 1945, I have seen an item in there of United States Government Bonds to the tune of several thousand dollars. Do you know whether or not those bonds would be available for payment to these farmers, or are they obligated somewhere else?

Mr. Grigsby: We object to it, if the Court please. This isn't supplementary to execution or anything of that kind. It has nothing to do with the merits of this case, as to whether they owe these plaintiffs or not, what they are going to pay it with.

The Court: Overruled. You may answer.

The Witness: So far as I know, the bonds could not be used for that purpose inasmuch as they were not borrowed—the money was borrowed from the Farm Security for certain purposes, all of which were subsequent development of the plant or new units which would have to be built to accommodate either—well, for instance, they could be used for the development of a cold storage plant; they can be used for new processing equipment or plant, but not for operating expenses.

Mr. Davis: Now, I have particular reference,

(Testimony of Roland Snodgrass.)

Mr. Snodgrass, to some United States Government Bonds that I think are shown [184] as an asset.

A. That is right.

Q. Now—

A. You see, here is the point with those bonds: When the Farm Security loan was made it was made for certain specific purposes.

Q. Yes?

A. It ran for three years with the provision in there—I believe it was three years—that any part not drawn at the end of three years would revert to the government. Now, among those specific purposes for which that money could be drawn, was this one thing—was indefinite—it could be drawn for whatever additional capital investment we might have to make to handle the business of the farmers, either as producers or consumers, without being specific. In other words, it could be used to enlarge the creamery, to enlarge the cannery or to construct a cold storage plant, but specifically for none of those, just for something of that type. As the expiration date of this loan approached the Board made application to withdraw that money from the hands of the Treasury and put it into bonds so that it could be held to be used for the same purposes if such an emergency should occur, or if such an opportunity should occur. And it has been held for that purpose, which is—well, it is being held for the purpose for which it was originally borrowed.

(Testimony of Roland Snodgrass.)

Mr. Davis: Thank you, Mr. Snodgrass, that is all.

The Court: Any further direct?

Mr. Grigsby: Yes, your Honor. [185]

### Redirect Examination

By Mr. Grigsby:

Q. Mr. Snodgrass: Now, you say that when the defendant Corporation, this Matanuska Valley Farmers Association, incorporated—was organized—what year was it organized?

A. Well, I believe it was organized in 1936, in the fall—November.

Q. And they took over the system of bookkeeping of the Alaska Rural Rehabilitation Corporation—they just kept on keeping the books the same way? Didn't you so testify?

A. I believe that the general principle of the bookkeeping is very much the same.

Q. And that was before this marketing contract was invented?

A. Well, that's quite a question. I couldn't answer that. The marketing contract existed in 1936.

Q. What did you say?

A. The marketing contract existed, of course, when the co-op was incorporated in 1936. In 1935 when the Corporation first started there was not enough farming so they had any system of bookkeeping which operated a business in farm produce. In other words, the incorporations were so closely

(Testimony of Roland Snodgrass.)

simultaneous—the operation of a Produce Department and the store and a garage and a creamery all came into existence about the same time as the Association was incorporated.

Q. All right, now. Anyway, you, generally speaking, adopted the system of bookkeeping that was maintained by the Alaska Rural Rehabilitation Corporation?

A. Yes, under its agency agreement. [186] Of course, they had other operations not in that system.

Q. Now, what do you mean by the consumer's dollar?

A. It's your 35c if you buy a quart of milk—or your 30c or 25c, depending on what the price was at the time you bought it.

Q. For instance, if it is 40c now, including the bottle, that's the consumer's dollar?

A. Yes, except the bottle wouldn't be included in the consumer's dollar on milk.

Q. All right now, when you paid these dairy-men off in additional payments in 1945 for their business of 1944—there are some slips in evidence here where it says 20 per cent—that's 20 per cent of what?

A. That is 20 per cent of the amount he had received during the year, 1944, for that product.

Q. You took 20 per cent of the cash he had received?

A. That is right.

Q. Now, how did you arrive at that? As you

(Testimony of Roland Snodgrass.)

said, there in '45 they got a payment of 20 per cent and then one of 20 and a quarter?

A. 22, or something like that.

Q. How was that arrived at? A. Well——

Q. At that time had you figured out what the net profit on the milk sales would be, approximately?

A. The whole chain of reasoning would go as follows: The Association as a whole has so many dollars which are shown as profit by the auditor. Then the auditor will be asked to break that down to find out what class of consumers or producers that came from. Well, he finds that it came—a large amount came from the creamery and dairy. That is before we break it down into milk and other products. A certain amount may have come from the Trading Post or the warehouse. Now, those component amounts—not necessarily the net profits on the units as shown by his audit, but the percentage of the total net profits of the Association—is found from this breakdown to have come from various classes of consumers and producers. Then, since you want to be specific on milk, there is found to be a certain percentage of the total net profits came from the operation of the creamery and dairy. Now, that is further broken down—I think perhaps Mr. Allyn, if you put him back on, has a breakdown on that—that has been broken down in two or three years, I believe, to distinguish as nearly as possible what profits have been made upon the products received from the farmers



(Testimony of Roland Snodgrass.)

and what profits have been made upon the operation of something like ice cream—or the manufacture of something like ice cream or popcicles or any of the frozen confections in which the greatest percentage of the material going into it is shipped in.

Q. And have they finally broken down and discovered what that product is? Ice cream mix, for instance: Have you it broken down so you know your profit in '45 on ice cream mix?

A. I don't believe it has gone that far, not for determining the profit on ice cream mix, but to split the creamery, or manufactured products, from the products which had as their basis milk, or milk and eggs. [188]

Q. All right. Now, we are getting off the question. Now, you say that the Association found themselves at the end of a season with a profit on all operations, and then you would seek to find out where that profit came from and break it down?

A. That is correct.

Q. And you would find that most of it, for instance, came from the dairy and creamery?

A. That is right.

Q. Well now, haven't you got that absolutely reversed? You keep track of the dairy and creamery unit during the season, don't you? A. No.

Q. To keep track of what you pay the dairy-men for their milk?

A. Oh, I beg your pardon, yes—all the figures—

Q. Now, wait a minute—and you keep track of

(Testimony of Roland Snodgrass.)

what it costs to handle that milk as you go along and what you get for it, and then in the wind-up you find out that the dairy-creamery has made \$57,000 and that the farmers have lost \$21,000, and you have got your breakdown first?

A. No, you don't.

Q. And then you found your net afterwards?

A. No, you are quite wrong about that.

Q. All right, then, you find yourself with some money on hand. You don't know where it came from or who to attribute it to, and then you break it down to discover it?

A. Well—

Q. Answer the question: Is that what you do?

A. No, that isn't what you do.

Q. Well, why don't you say—well, I will ask you this [189] question, Mr. Snodgrass: Now, in 1940, I believe you first started milk deliveries in Anchorage?

A. That is right.

Q. And from that time—from 1940—and up until date you have never purchased milk from the dairymen at a flat price, have you?

A. Well, are we going to argue about that again?

Q. No, we are not going to argue about it. I am asking you. Now, you have told me out in the hall three or four times, haven't you, Mr. Snodgrass, that you are—

Mr. Davis: He testified for Mr. Grigsby the other day they did purchase it at a flat price at one time. Mr. Grigsby is not entitled at this time to cross-examine his own witness.

(Testimony of Roland Snodgrass.)

Mr. Grigsby: Well, I think I have——

The Court: Well, if counsel wants to try to prove that the witness on some other occasion gave testimony not in harmony with that given on the witness stand, the law permits that.

Mr. Grigsby: Now, you were on the stand the other day. Before you went on the stand you told me in the library that since 1940 the co-op had never paid the dairymen a flat price for their milk and that you had so testified—did you not so state?

A. Well, I will tell you, Mr. Grigsby——

Q. Well, did you not so state?

A. I couldn't even recall.

Q. All right. Then, after you were on the stand, and you wouldn't come out and swear to that, did you not explain to Mr. McAllister and Mr. Monaghan it was because I wouldn't ask you the right questions? A. No, that was about—— [190]

Q. You didn't say that?

A. That was about pools.

Q. All right, then. Now, you didn't so state? Now, I am asking you if from the time the co-op started delivering milk in Anchorage and selling it here, on any scale to amount to anything, in 1940, has the co-op ever purchased milk from the dairymen at a flat, fixed, final price?

A. No. Now, we are getting where we can make sense. As I said, the last time you asked me, I sold milk at a flat price in 1940 because there wasn't any suggestion of anything more or anything less—in 1940. Now, you asked me things about

(Testimony of Roland Snodgrass.)

flat price and so on, but when you use the word "final" I can say no——

Q. All right. Since 1940 you always have made the farmers additional payments after the close of the fiscal year?

A. That is correct, yes.

Q. For their milk? A. That is right.

Q. And have you not, then, paid the farmers, ever since 1940, according to the provisions of Paragraph (7) of this contract?

A. Just as closely as we could.

Q. That is what you have tried to follow?

A. That is what we have tried to follow.

Q. Then when you talk about finding yourselves with a profit at the end of the year and trying to redistribute that back to the people that contributed to it the most, you mean that you paid back the men that appear to have made a profit according to the profit they made? Is that really what you mean? [191] Isn't it?

A. According to the profit the Association has made.

Q. According to the profit the unit—the dairy-creamery unit made, you fixed the final price of their milk?

A. No, according to that percentage of profit which that unit bore to the total profits.

Q. But you just stated you paid them off according to that Paragraph (7) as nearly as you could?

A. As near as we could and that was a considerable difference.

(Testimony of Roland Snodgrass.)

Q. According to your financial ability?

A. No, according to the distribution profits of the Association.

Q. Well, according to these figures the dairy-creamery unit makes a profit of \$57,000. Then you consider that a profit of the Association?

A. Well——

Q. Do you, or do you——

A. No, that might not be any profit at all to the Association.

Q. Now, this Paragraph (7) provides that you pay these men all you get for their milk after deducting anything you have advanced them, and after deducting——

A. Well, I know what it says.

Q. Well, all right. And after deducting operating expenses and indirect overhead, and then, according to Paragraph (7) they are entitled to all the net, aren't they?

A. Well——

Q. Well, are they or are they not?

A. According to Paragraph (7) I believe they are entitled to all the net after those deductions.

Q. And you have been trying to pay them off as near as you could according to Paragraph (7)?

A. That is correct.

Q. What is it that has prevented you from paying them off entirely according to Paragraph (7) and not as near as you could?

A. Now, we are getting back—can I answer it at length?

(Testimony of Roland Snodgrass.)

Q. I hope it won't be too long.

The Court: Go ahead.

The Witness: When the Association took over the operation it had both losing and profit-making unit—it had both losing and profit-making units, and the existence of losing units would not permit at any time the Association to distribute all its profits based upon just the departmental earnings because in that case, supposing that it had five units which made \$10,000 and five units which lost \$10,000, it would break even. But suppose it paid out those five figures in black when its net profit or loss shows zero, it would liquidate itself at the rate of \$50,000 a year, which is a physical impossibility.

Mr. Grigby: As near as possible means if you had to comply with the terms of that contract you couldn't run because so many departments lost money, or might lose money?

A. I believe that that is correct.

Q. Well, but that doesn't alter the fact that you were buying that milk under a contract as set forth in Paragraph (7)?

A. We bought it as set forth in the marketing contract.

Q. Paragraph (7)?

A. And we tried to follow Paragraph (7) [193] as closely as possible.

Q. Now, this is the contract and the only contract under which you bought anything, isn't it?

A. Yes, but there is Section 8 in there.

Q. But the contract as a whole?

(Testimony of Roland Snodgrass.)

A. That is right.

Q. Is this the only contract under which you purchased anything?

A. No, we have used other contracts on peas, but for the most part that contract is all.

Q. And this is the only contract under which you bought any milk from the dairymen?

A. That is right.

Q. And you say since 1940 you have never purchased it under any other provision than Paragraph (7)?

A. No, I didn't say that.

Q. You said you never had a flat price under Paragraph (8) since 1940, didn't you?

A. I said this: We tried to follow Paragraph (7) as closely as possible—

Q. But did you not say, since 1940 and from the time you delivered milk in Anchorage, you had never purchased milk from any dairymen at a fixed, flat price? Now, you can answer the question one way or the other?

A. Well, I didn't say that.

Q. Well, is it a fact?

A. I said we had never purchased milk since 1940 at any final price.

Q. All right. Then you haven't, have you, since 1940, ever purchased any milk from any farmer under Paragraph (8) of that contract?

A. 1945 maybe—not that I know of [194]

Q. Not that you know of; '45 maybe? So, all this flat price is an afterthought, isn't it, and a fake?

(Testimony of Roland Snodgrass.)

A. No, it is no fake. It is in the contract.

Q. It is in the contract, but it has never been elected?

A. It says at the discretion of the Board, and that probably means when a circumstance—a situation arises where they exert their discretion.

Q. And when they exert their discretion what do they do?

A. As I understand, when an emergency arose, it says—Section (8)—it gives them the right—

Q. And they have to notify the farmers?

A. I believe so.

Q. I will read your Section (8):

“The Association is hereby authorized to process or manufacture into changed or new products the products delivered hereunder and pay the Producer as provided for in Paragraph 7, from the proceeds, from resale of the changed or new products or at its discretion to pay a flat delivery price therefor to the Producer as full payment \* \* \*”

Now, you never have done that since 1940 in dealing with the milk farmers?

A. We have not done it since 1940.

Q. You have never told any seller of the price—that he was selling his milk at a flat, fixed price?

A. No, that is right,

Q. And you know that hasn't been done?

A. That is correct. [195]



(Testimony of Roland Snodgrass.)

Q. Do you know Mr. Rempel out here?

The Court: I think we had better suspend for a few minutes. Court will stand in recess until 11:15.

(Whereupon recess was had at 11:07 o'clock a.m.)

After Recess

Mr. Grigsby: Mr. Snodgrass, you know A. A. Rempel? A. Yes.

The Court: Who?

Mr. Grigsby: R-e-m-p-e-l. Do you remember he came to the Colony in the spring of '44?

A. About that time. I couldn't say for sure, but he was here in the fall, I believe, of '43 and came and settled here in '44 in the spring.

Q. And he sold milk to the co-op in the season of '44? A. Yes.

Q. And he brought cows with him, did he not, from the outside? A. Yes, sir.

Q. Do you remember during that time you were the manager? A. Yes.

Q. Did you explain to him the system of buying milk from the farmers when he went into business with you?

A. I couldn't say whether I did or not. I don't know.

Q. You won't say you didn't have a conversation with him?

A. No, I won't say I didn't.

(Testimony of Roland Snodgrass.)

Q. In which you showed him they paid so much down and showed him your own checks for subsequent payment to explain what he eventually—

A. It is quite possible because I showed [196] them to several people—it is probably so.

Q. Now, I notice here in the co-op statement for comparing the fiscal years 1944 and 1943—this is Defendant's Exhibit 1—there is a note on Page 3 of this exhibit reading as follows:

“Additional payments to producers of milk, cream, eggs and meat in the amount of \$47,516.19, for 1943 were made in 1944 and charged against 1943 income.”

Do you recollect that to be a fact?

A. Substantially that, yes.

Q. And that was also paid off in installments of, say, 20 per cent and then additional per cent?

A. That part on milk?

Q. On milk, yes,           A. Uh-huh.

Q. The meat isn't in the Dairy Department, is it?           A. No.

Q. But eggs are?

A. I believe at that time they were probably in the Meat Department.

Q. At that time they were in the Meat Department?           A. Yes.

Q. In 1945 were eggs in the dairy-creamery?

A. In '45 I am very sure they were in the dairy-creamery.

(Testimony of Roland Snodgrass.)

Q. Well now, do you know what—from your books can you furnish what was paid for eggs and what was received for eggs?

A. I think perhaps by a little digging I could find the amount paid for eggs. I don't believe it would be so easy to find the amount received for eggs. That would take quite a bit of work.

Q. But in these figures which are in evidence here—you were here during the whole trial, and this alluding to Plaintiff's Exhibit 3, being a statement—comparison of years 1946 and '45, [197] there is an item, the "Cost of Goods Sold, Dairy and Creamery, \$178,422.88" and it has been testified that of that amount \$136,143.47 was paid to the milk producers—remember that, don't you?

A. Yes.

Q. That leaves a balance of about \$42,000 that was paid for other goods. Now, do you know whether that \$42,000 included what you paid for eggs?

A. I believe it does.

Q. And you think you can find out what amount that was quite easily?

A. I believe so, yes.

Q. Do you know, having been manager in '45, what else that \$42,000 difference included?

A. This is on cost of goods sold, isn't it?

Q. Yes.

A. Well, it should include all the material which went in the manufacture of popcicles; it should include butter which was purchased to go into the

(Testimony of Roland Snodgrass.)

ice cream; it should include a certain amount of powdered milk; it should include——

Q. Extracts?

A. Extracts, dairloid, powdered eggs, possibly even salt.

Q. You didn't put any fresh eggs in that manufacture in the creamery?

The Court: What is the question?

Mr. Grigsby: No fresh eggs used.

A. There could be, although it wouldn't be customary—although if they get cracks they might buy them so much a pound and use in ice cream.

Q. But for the most part you used powdered eggs?

A. For the [198] most part, powdered eggs, yes.

Q. Now, I asked the other day, if that could be broken down and if I could have those figures. Do you know whether you can furnish that information or not?

A. Let's hear, what is the information again?

Q. What that \$42,000 was spent for?

A. Well, I suppose the accountant could find that.

Q. Well, why should it be difficult?

A. Well, it would entail going over the purchases from perhaps half a dozen companies—maybe 15 companies—for an entire year, all of which would be over in a dead file in the warehouse.

Q. Well, you have got your books for '45 accessible on everything else. You have got the total here, \$178,422.88, and you have got 136,000 of that

(Testimony of Roland Snodgrass.)

paid to milk farmers. Why haven't you a statement there where the rest of it went?

A. Well, you see, the cooperative having to distribute its profit, keeps a record of its purchases from members and a record of its sales to members. It has to do those in order to have knowledge of where its profits must be distributed, but it does not keep a record of the salt that it buys, or the operating supplies it buys. It doesn't keep it except in the one total. The auditor simply finds you paid so much money, and those are coded and the code is all that is kept.

Q. Now, Mr. Snodgrass, have you any way of determining whether or not the creamery down there made money?

A. No, the [199] only thing that you know to start with—when the auditor gets through—is that the combined creamery and dairy on its operation showed a profit.

Q. That is all you got?

A. That is all you have and that is still somewhat arbitrary.

Q. And part of the farmers' milk went into the creamery down there, too?

A. Yes, a certain amount of it goes in.

Q. Do you know how much?

A. No, I don't.

Q. Well, can they readily produce how much was sold as milk in Anchorage?

A. Well, I think Mr. Allyn furnished you with

(Testimony of Roland Snodgrass.)

a record showing you the dollar value sold in Anchorage, and, that is in Anchorage and Palmer and other points.

Q. Well, that's what I mean—marketed as milk?

A. Yes, I believe that has been done. I think perhaps you have the figures.

Q. We have the figures you paid them \$136,131 and some cents in '45 in bi-weekly payments—

A. Uh-huh.

Q. And you never paid them anything after that?

A. Uh-huh.

Q. But on the stand the other day Mr. Allyn estimated from some guess that had been made for the operations in 1944 that the creamery had made \$20,000 in '45. That was just an arbitrary estimate, wasn't it?

A. No, it isn't—it isn't arbitrary completely. There is something slightly arbitrary about splitting off the one part of the operation from another part of the operation.

Q. Well, anyway, now, you take the year 1944: At the end [200] of the year 1944 the dairy-creamery showed a profit of \$66,961.03 as compared with \$57,000 at the end of the year 1945. Are you familiar with that, that that is about the relation?

A. That is about right.

Q. Now, in '44, they made the farmers payment—that is paid in '45—paid the milk producers \$47,516.19, meat being also included in that, being

(Testimony of Roland Snodgrass.)

somewhat less than that, but it would be, anyhow, over \$40,000 additional.

A. That's good enough to work with.

Q. Wouldn't it?           A. Uh-huh.

Q. Now, in '45 they have \$57,000 to the credit of the dairy-creamery, net, and if they had followed the same system that would have been distributed in proportion?

A. No, not necessarily.

Q. What is that?           A. Not necessarily.

Q. If they had followed the same system?

A. Well, that is where I differ. That is, the system which they followed was to distribute that part of the net earnings of the Association which was made by the creamery and dairy.

Q. Yes, all right. Now—and you have the figures here that the creamery and dairy in '44 earned a net profit of \$66,961.03 and since you had the money you gave it to them.

A. Because we had the Association earnings we gave it to them.

Q. Well, because you had the money—it was left—to pay?

A. Well, I will agree with you there, although what we mean by [201] "had the money" we may differ on.

Q. Well, you did have it, didn't you? You paid them?

A. But you see, we could have the money by liquidating inventories, but if the Association didn't show a profit you wouldn't have the money.

(Testimony of Roland Snodgrass.)

Q. But you didn't have to liquidate inventories——

A. No, we had net earnings in '44 to distribute.

Q. And if you had had the earnings in '45 they would have been paid the same way?

A. That is correct.

Q. So, the only reason you didn't pay was because you didn't have anything to pay them with?

A. We didn't have the earnings to pay them with, that's right.

Mr. Grigsby: Now, your Honor, I have a number of witnesses from the Valley that I don't like to bring back tomorrow if I can get through with them today. Can I excuse this witness for the present and he will be here throughout the trial anyway, I suppose.

Mr. Davis: I will have the right for re-cross, your Honor?

Mr. Grigsby: Certainly.

The Court: Yes. You may step down, Mr. Snodgrass.

Mr. Grigsby: Mr. Rempel?



AARON A. REMPEL

being first duly sworn, testified for and in behalf of the plaintiff as follows:

Direct Examination

By Mr. Grigsby:

Q. Will you tell the Court your name?

A. Aaron A. Rempel.

Q. Are you one of the dairymen down in Matanuska Valley?      A. Yes.

Q. And are you one of the dairymen whose claim is involved in this law suit?      A. Yes.

Q. When did you come to Alaska, Mr. Rempel?

A. I come to Palmer February 18, 1944.

Q. And did you bring any cows with you?

A. Yes.

Q. Now, that year, did you sell milk to the defendant Association?

A. I started to deliver milk that year, first of March?

Q. The first of March?      A. Yes.

Q. Did you sign a contract?      A. Yes.

Q. Did you sign one of these yellow contracts before you started in?      A. Yes.

Q. Sign a document like that?      A. Yes.

Q. Now, before you started in delivering milk did you have a conversation with the management?

A. Yes.

Q. As to what you were going to get for your milk?      A. Yes.

(Testimony of Aaron A. Rempel.)

Q. How was it explained to you you were to be paid?

A. He explained to me that we——

Q. Who did it?           A. The general manager.

Q. Who?

A. Mr. Roland Snodgrass was at that time manager.

Q. All right?

A. He explained to me, we get down payment—I don't remember—better than \$6.00, four per cent—— [203]

Mr. Davis: I am sorry, I can't understand——

Mr. Grigsby: So far, he explained he paid him \$6.00 for——

The Court: The witness may repeat. You had better repeat it again. Mr. Davis didn't hear it.

Mr. Davis: I heard him, but I didn't understand him.

The Witness: The down payment was better than \$6.00.

Mr. Grigsby: Per what?

A. Per hundred pounds, four per cent butter-fat.

The Court: Did you say about \$6.00?

The Witness: A hundred pounds.

The Court: \$6.00 a hundred pounds?

The Witness: Yes.

Mr. Grigsby: He said a little better than \$6.00.

The Court: Oh, a little better than \$6.00?

The Witness: Yes.

(Testimony of Aaron A. Rempel.)

Mr. Grigsby: And go ahead, what's the rest of the conversation—the explanation?

A. The manager explained that after the year's over then what is made, profit, on the milk is divided and you recover in two payments. He just had received one payment. I don't remember exactly what his check was, but it was a—payment he got and he expected another payment sometime later in the year.

Q. He showed you a check?

A. He had a check in his hand. He showed me he just got a check.

Q. That was the additional payment for the '43 operations, [204] was it?      A. Yes, '43.

Q. And do you remember about what percentage it was—whether it was 10, 20, 30 or 40? Do you remember the percentage?

A. No, I don't remember that. It was late in '44 when I got payment and I know the per cent what I got, but I don't know how much it was. But this was a check, and he told me that later on he will get another payment.

Q. He was explaining to you that for the milk he sold in '43?      A. Yes.

Q. Along in March, when you were talking to him, he had got a pretty substantial payment and would get another one?

A. Yes, it was in February I talked to him—first of March I started already to deliver milk.

Q. And that was his explanation to you of how

(Testimony of Aaron A. Rempel.)

you're paid for your milk and how you would be paid?      A. Yes.

Mr. Grigsby: You can take the witness.

Cross-Examination

By Mr. Davis:

Q. Now, Mr. Rempel, when you sold milk—how many cows did you have?

A. I didn't bring over ten cows.

Q. Did you sell milk to the co-op in 1944? You came, now, in February, 1944?      A. Yes.

Q. Did you sell some milk in the year 1944?

A. Yes, started March 1, I started to deliver milk.

Q. And in 1944, then, according to their books, that goes [205] until November of 1944, is that right?      A. I don't—

Q. According to the set-up of the books, they are on a fiscal year that ends in November each year?      A. Yes.

Q. Now, did you deliver your milk to the co-op?

A. Yes.

Q. Did you deliver it yourself?

A. No. That time Mr. Linn, he was delivering my milk to the co-op.

Q. Now, were you here during the time that Mr. McAllister and Mr. Monaghan testified two or three weeks ago?      A. No.

Q. You weren't down here during that time?

A. No, I wasn't.

Q. Now, how were you paid for that milk, Mr. Rempel?

(Testimony of Aaron A. Rempel.)

A. I got—they got every two weeks, the 20th and the first of the month—I got paid for the milk. That time I delivered ungraded milk; I didn't have any grade milk, and they was getting less than \$6.00 for this——

Q. When did you start delivering grade A milk?

A. That's this year.

Q. Just this year?           A. Yes.

Q. You have always delivered Grade B milk?

A. Yes.

Q. Prior to 1947?           A. Yes.

Q. Or, possibly 1946?

A. No, I started in '47.

Q. In 1947? You got, then, each two weeks you got a check?           A. Yes, two times a month.

Q. What was that check based on, do you know? How did they figure that check you got each two weeks, do you know that?

A. After the year was over I got checks—I got a coupon still that [206] says “second payment on milk pool.”

Q. I will get to that in a minute, but the two-weeks payment: Do you know how that was figured—the payment you got every two weeks?

A. \$6.00 every hundred pounds, according to the contents of cream.

Q. And that figure was standard for all the dairymen up there? They paid them all so much a hundred pounds for that two-week payment?

A. Two-week payment according to the amount of milk delivered.

(Testimony of Aaron A. Rempel.)

Q. And according to grade? They paid different for Grade A from Grade B? A. Yes.

Q. And they paid different from one cream content and different for another? A. Yes.

Q. Do you know what is done with the Grade B milk? A. Yes, I know.

Q. I am sorry? A. Part of it I know.

Q. Well, it is a fact, isn't it, Mr. Rempel, the Grade B is put into ice cream and into other products the creamery manufactured—isn't it?

A. That is what the law requires, yes.

Q. Yes, the Grade B milk is not supposed to be sold as milk? A. No.

Q. Do you remember how much money you received for your milk in 1945?

A. I can tell exactly—

Mr. Grigsby: Excuse me, you mean milk produced in '45?

Mr. Davis: Yes, I don't mean the payment made in '45 for [207] 1944, Mr. Rempel?

A. I didn't get—

Q. Do you remember how much you got in money for the milk you delivered in 1945?

A. That—I didn't get—yes, that's what I—

Q. These two-week payments, Mr. Rempel: Do you remember how much you received?

A. I can't say exactly, but I believe around 2,000—maybe less or more.

Q. Well, I have it down here 48,925 pounds that you delivered that year—that's 1945?

(Testimony of Aaron A. Rempel.)

Mr. Grigsby: That's Grade A, according to this—

The Witness: No, that is Grade B.

Mr. Davis: And that you received 2300—I believe it is \$2330 some odd cents that year?

A. That's about it—about \$2,000. I didn't remember exactly; I believe that is correct.

Q. Then, going back to the year 1944, you received, did you, these two weekly payments—you received a check every two weeks? A. Yes.

Q. And then at the end of the year you got that slip you have there? A. I have got two tags.

Q. That is one of them and you had another like it?

A. This was the last. The other was before.

Q. That is the second? A. Yes.

Q. You were satisfied, were you, Mr. Rempel, with the way this matter was handled in 1944?

A. Yes.

Q. But you are not satisfied with the way it was handled in [208] 1945? A. No.

Q. You are one of the plaintiffs in this case?

A. Yes.

Q. That is, you are one of the men who assigned his claim to Mr. Monaghan? A. Yes.

Q. And you assigned that for the purposes of collecting further money? A. Yes.

Q. Mr. Monaghan doesn't own your claim, does he? A. No.

Q. If he gets anything out of it he is to split with you according to what your claim is?

(Testimony of Aaron A. Rempel.)

A. Yes.

Mr. Grigsby: I will stipulate that is the case as to all of them, Mr. Davis.

Mr. Davis: Yes, I don't think there is any dispute about that. Now, Mr. Rempel, as a matter of fact, the payments which were made to you on this two week basis were higher in 1945 than they had been in 1944, weren't they, for the same amount of milk? A. No, but even lower.

Q. I am not talking about all the payment you got, now. I mean the so much per hundred pounds was higher in 1945 than it was in 1944?

A. They started to cut down the price on the ungraded and the B Grade milk—that they was getting less.

Q. Now, in 1944 you were getting \$5.15 a hundred pounds for Grade B milk, weren't you?

A. For awhile, and then later on I was getting \$3.50.

Q. For Grade B? A. Yes.

Q. What is the difference, by reason of the different cream [209] content?

A. By reason of ungraded milk—not Grade A milk.

Q. And then in 1945, in August, the price on Grade B milk went to \$5.35, didn't it? I shouldn't ask you. You probably don't remember.

A. In '46 the price was cut down on Grade B milk.

Q. But up until '47 your milk was always Grade B? A. Yes.



(Testimony of Aaron A. Rempel.)

Q. Now you are selling Grade A milk?

A. Yes.

Q. And without trying to get the exact figures, you probably don't remember them, but the price of Grade B milk was raised several times in 1945 over what it had been in 1944, isn't that correct?

A. Yes. But then, that's the general manager—at that time, Mr. Harris—he told us of the meeting of the dairymen that he was making more and more on Grade B milk than from Grade A milk.

Q. Mr. Harris wasn't manager until 1946, was he?

A. He was general manager.

Q. But not until 1946, was he? A. In '46.

Q. Yes. Now, I asked if you didn't receive several raises in the base price of your milk during the year 1945 over what it had been in '44?

A. Only when I got more when the grade was better—more fat content.

Q. Now, supposing the grade was the same. You sold Grade B milk all during 1945? A. Yes.

Q. Now, if your Grade B milk in 1945 was always four per cent milk—of course, it wasn't; it would vary from time to time—but if it was always four per cent milk, the price per [210] hundred pounds went up three different times in 1945, didn't it? A. I don't know that. I don't think so.

Q. Well, I have here a paper that says that the price of Grade B milk for four per cent in 1943 and 1944 was \$5.15; that on August 1, 1945, it went to \$5.35; on September 1, '45, it went to \$5.85; and on September 16, 1945, it went to \$6.35. Now, do you have any remembrance about that at all?

(Testimony of Aaron A. Rempel.)

A. I—what I notice—I didn't know that. I always put it up that the fat contents was getting better. I always was getting—you see, I had the fat contents from 3.5 and later to 4.6.

Q. So, of course, your milk was worth more, even if the price hadn't been changed, when your fat content was better?      A. Yes.

Q. But you don't know anything about whether the price was raised during that time for the same grade of milk?

A. Yes, it was, I remember now, in the winter time—was paid even dollar more than the summer time for Grade A milk.

Q. But that is your winter bonus? They paid the farmers a bonus?      A. Yes.

Q. If they produced a certain amount of milk in the winter time didn't they? But you don't know whether or not these raises I have been talking about are the winter bonus at all?

A. No, I didn't know anything—

Q. Well, the winter bonus wouldn't be paid in August? Your milk wouldn't be raised in August for a winter bonus?      A. No, it [211] was later.

Q. I think that is all, Mr. Rempel.

### Redirect Examination

By Mr. Grigsby:

Q. Mr. Rempel, let me have that paper. That refers to the payment you got in '45 for the milk sold in '44?      A. Yes.

(Testimony of Aaron A. Rempel.)

Mr. Grigsby: We offer it in evidence.

The Court: Is there objection?

Mr. Grigsby: Any objection? (Handing to Mr. Davis.)

Mr. Davis: I don't think so.

The Court: It may be admitted and marked Plaintiff's Exhibit 7.

(Plaintiff's Exhibit No. 7 admitted in evidence.)

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PLAINTIFF'S EXHIBIT No. 7

Remittance Advice—No Receipt Required  
Matanuska Valley Farmers Cooperating Association

Date of Invoice	Description	Gross Amt.	Discount or Deduction	Net Amt.
	Second payment on milk pool			
	20% of dollar value—\$1895.56	\$379.11		
	Less 2% reserve		\$7.58	\$371.53

[Endorsed]: Filed August 5, 1948.

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Mr. Grigsby: That is all, Mr. Rempel.

The Court: That is all. How long will it take you to put on these witnesses you wish to have testify today?

Mr. Grigsby: It depends on the cross-examination. I can be very brief.

The Court: Well, if it is agreeable with everybody court will now stand in recess until two o'clock.

(Whereupon recess was had at 11:51 o'clock a.m.)

Afternoon Session

The Court: Another witness may be called in the case on trial.

Mr. Grigsby: Call Mr. Quarnstrom.

CLARENCE QUARNSTROM

being first duly sworn, testified for and in behalf of the plaintiff as follows:

Direct Examination

By Mr. Grigsby:

Q. Mr. Quarnstrom, your name is Clarence Quarnstrom? A. Yes, sir.

Q. You are one of the claimants in this action?

A. Yes, sir.

Q. When did you come to Alaska?

A. In May—23, 1935; landed in Seward.

Q. And when did you go to the Matanuska Valley to live? A. That is right.

Q. Did you become a member of the co-op?

A. Yes, as soon as it was organized and I was given the opportunity I became a member.

Q. And since that time have you been a milk producer?

A. No, not right from the start.

Q. When did you start selling milk to the defendant corporation?

A. I think about the spring of 1939. I don't

(Testimony of Clarence Quarnstrom.)

have the exact date, but that would be approximate.

Q. Have you sold milk to them ever since that date?

A. I think—without a break, I think, continuously.

Q. And up to and including the present time?

A. I am still selling milk, yes.

Q. Now, did you sign one of these marketing contracts?

A. Yes, I have one here. [213]

Q. Entitled "Matanuska Valley Farmers Cooperative Association Member's Standard Marketing Contract"?

A. Yes, I signed that.

Q. Do you know what year?

A. No, I don't, but I think 1937.

Q. Now, you have, you say, sold milk to the Matanuska Valley Farmer's Cooperative Association ever since—well, anyhow, prior to 1940?

A. Yes.

Q. Now, what was your arrangement with them as to the price you were to receive for that milk?

A. Well, to start with, we just sold our milk there and just brought the milk there and they paid us for it what they thought was right.

Q. Well now, how long did that system continue?

A. Well, in my mind, it continued that way until one time we—there was some discussion about cutting the price of milk. Up until that time I had under-

(Testimony of Clarence Quarnstrom.)

stood it would be just a flat price—that's my understanding of it—and there was some discussion about cutting the price of milk. And they had a meeting, and so we asked Mr. Stock—he happened to be present at this meeting—a group of the dairymen—and I asked him—or, I didn't ask him, but it was asked what the Board had in mind in cutting the price of milk, and he told us—maybe I could almost quote him—he said: What are you fellows crabbing about in the cut of price of milk? If the dairy makes any money there is nobody but you fellows can get a nickle of it; nobody else can touch it. And that was about the beginning of the time when I realized that we were selling milk on a pool basis. [214]

Q. Well now, prior to that—do you know what year that was you had this meeting and this conversation?

A. No, I don't. That would be about '41, I imagine.

Q. Well now, since that time, describe to the Court the modus operandi—the system under which you have sold your milk, how you were paid?

A. Well, we have been paid every two weeks, get a check for the milk according to the number of pounds of milk at a set price according to the test of the milk for butterfat content, and with the understanding that if there was any profit to be made it will be divided among the dairymen at the end of the year—any profit in the dairy—

(Testimony of Clarence Quarnstrom.)

Q. You mean that after the close of the dairy year, then subsequently the profit would be divided?

A. That is right, after the year has been closed and they find out just what their operating expenses have been and just what it cost to handle the milk—well then, they prorate the dairy profits back to the dairy—

Q. By pro rata you mean according to the amount of milk?      A. That's right.

Q. Now, that was, you think, about '41?

A. Well, I don't know the exact date. I didn't write it down, but it is quite a long time ago.

Q. Was it as long ago as '41 or '42?

A. Yes, '42 would be the very latest.

Q. Now, since that time has that been the system?

A. Yes, [215] that has been the system that I have sold milk and that is the system that I have received pay for the milk.

Q. Now, I will ask you whether or not, for the milk that you sold them in the season 1942, you received additional payments after the close of the season?      A. I think that I did.

Q. And '43?

A. I received additional pay in '43.

Q. Well, and for the milk you sold in '43 did you subsequently receive additional payment?

A. Yes, I received additional payment in '44.

Q. And for '44 production did you receive additional payments in '45?      A. Yes, I did.

Q. Have you any documents there showing that?

A. I have a couple that I just accidently hap-

(Testimony of Clarence Quarnstrom.)

pened to save. I wasn't in the habit of saving them, but I just happened to run across two. There is no date on one, and the other one is dated September 10, 1945.

Q. Now, was that for milk sold in '44?

A. Yes.

Q. And that reads: "Final Payment on Milk Pool." Prior to that had you received payment on the '44 production? In '45?

A. That's dated——

Q. September 10——

A. Yes, I am quite sure that I received another payment of 400 and some dollars, previous to that—this is for 521.

Q. Do you know what year this one is for?

A. No, I am not sure of that.

Q. This reads: "Second Milk Pool Advance. 20% of Dollar [216] Value purchased, Less: 2% Statutory Reserve." You don't know what——?

A. I think that was early in the year of '44, on '43 production. I am not sure; that is just my guess.

Mr. Grigsby: We offer these two slips in evidence. (Handing them to Mr. Davis.)

Mr. Davis: No objection.

The Court: They may be admitted and marked Plaintiff's Exhibits 8 and 9.

(Plaintiff's Exhibits 8 and 9 admitted in evidence.)



(Testimony of Clarence Quarnstrom.)

PLAINTIFF'S EXHIBIT No. 8

Remittance Advice—No Receipt Required  
 Matanuska Valley Farmers Cooperating Association  
 Palmer, Alaska

Date of Invoice	Description	Gross Amt.	Discount or Deduction	Net Amt.
	Second "milk pool" advance:			
	Total amount purchased	\$1947.26		
	20% of dollar value purchased	\$389.45		
	Less 2% statutory reserve	7.79		
	Amount of second advance			\$381.66

(Endorsed)  
 Clarence Quarnstrom

[Endorsed]: Filed August 5, 1948.

PLAINTIFF'S EXHIBIT No. 9

Quarnstrom, Clarence	Final Payment on Milk Pool September 10, 1945
Total dollar value production	\$2519.94 x 21.125% .....\$532.34
Less 2% S.R. ....	10.65
Net amount of draft .....	\$521.69

[Endorsed]: Filed August 5, 1948.

Mr. Grigsby: Mr. Quarnstorm, were you present at a meeting of the dairymen and the directors of the co-op sometime last spring before this suit came up?  
 A. Would you know the date?

Q. In March, I believe?

A. In March? Well, I was to a meeting of the dairymen with the representation of the co-op Board

(Testimony of Clarence Quarnstrom.)

either late in March or early in April a year ago. I don't know the date.

Q. Now, was this controversy discussed there—this matter of your getting this profit for '45 that is in controversy here? Was that under discussion?

A. I believe that the dairymen asked, or invited the co-op Board to be present at a meeting for the express purpose of discussing this payment.

Q. And was it discussed?

A. It was. That was the only thing that was discussed.

Q. Now, at that time was Mr. Stock present?

A. Yes. [217]

Q. And was there anything stated by him with reference to the co-op owing or not owing you this money—you dairy producers?

A. If I am not mistaken, one of the dairymen asked Mr. Stock—or maybe he was addressing the complete Board—that—the members that were there—they weren't all there, but there was a quorum there—"do you feel that the dairymen have this money coming?" And I think Mr. Stock said—or one of the members said: "I can't speak for the whole Board, but personally, I think that you fellows have it coming; but what are we going to pay you with?"

Q. To the best of your recollection, who made that statement?

A. That statement—was Mr. Stock who made that statement.

(Testimony of Clarence Quarnstrom.)

Mr. Grigsby: You can take the witness. Just one other question—well, never mind; go ahead.

Cross-Examination

By Mr. Davis:

Q. Now, Mr. Quarnstrom, you are one of the original incorporators, I guess, of the Matanuska Valley co-op, aren't you?

A. Well, I was one of the—I joined the co-op as soon as it was organized.

Q. Yes, back in 1935, '36, '37—somewhere in there? A. My contract is dated June 22, '37.

Q. All right, you're one of the early members of the co-op? A. That is right.

Q. To begin with you weren't—[218]

The Court: Wait just a minute. I didn't get that—what is the date of that contract?

The Witness: 22d of June, 1937.

Mr. Davis: Have you had any official position with the co-op, Mr. Quarnstrom? A. No.

Q. Ever been a director or officer of any kind.

A. No.

Q. Do you know who drew up those contracts or how that particular contract happened to be adopted? Do you know anything about that?

A. No, I often wish I did.

Q. Well, they actually came from Washington, didn't they? A. I wouldn't know.

Q. Don't know anything about it?

A. I don't know.

(Testimony of Clarence Quarnstrom.)

Q. Now then, up until 1939 to the best of your recollection you didn't produce milk?

A. No, I might have sold them some cream previous to that, but very little.

Q. You weren't in the dairy business on a major scale?           A. No.

Q. Then, in 1939 you went into the dairy business and since then you have sold them milk every year?

A. That is right.

Q. And you are selling them milk now?

A. That's right.

Q. And if I understood your testimony correctly, up until sometime, possibly, as late as '42—maybe '41—you figured that the payment you got every two weeks was the final payment on your milk. That was the payment?

A. Well, I, like a lot of others I imagine, had failed to read the contract and understand the provisions whereby the terms of sale were—and furthermore, [219] as Mr. Snodgrass testified the Produce Department had been running in the red and we just didn't expect any profits. Now, I don't know whether I figured it was a flat price or just figured that they wouldn't make any profits so there would be nothing to divide.

Q. Yes, we are going into a lot of discussion on flat prices or advances. I don't want to get into that; that is for the Court to decide. I do want to know what was done and the Court can decide what the payment was, but it was your idea at

(Testimony of Clarence Quarnstrom.)

hat time you were receiving a flat payment until something further took place?

A. Well, as I said before, I don't know as I ever formulated any definite ideas as to whether it was a flat price or a pool price, but nevertheless, that payment that I got every two weeks was all I expected to get.

Q. And the fact of the matter was it was all you did get? A. All I did get, yes.

Q. Up until, maybe, 1941—'42—something like that? A. That's right.

Q. Now, you too, in 1945, were paid every two weeks, I presume, for the milk you had delivered in the previous two weeks? A. That is right.

Q. I don't mean, now, to pin you down to say you were paid in full; I am not trying—

A. I received money every two weeks, yes.

Q. You got money every two weeks based on the amount of milk [220] you had delivered the previous two weeks? A. That's right.

Q. At a price per hundred pounds for a certain grade—whatever grade you delivered?

A. That is right.

Q. Now, did you deliver Grade A milk or Grade B milk? A. Grade A milk.

Q. And your milk has been Grade A ever since they have been grading it that way?

A. I was one of the first to start in Grade A. I think my number at the dairy is No. 7, so presumably six producers that produced Grade A milk before I did, which all took place in a matter of, maybe

(Testimony of Clarence Quarnstrom.)

a month or six weeks from the time they actually started to sell Grade A milk in Anchorage.

Q. All right. Now then, did you receive extra payments for the year 1943? At least?

A. Yes.

Q. And 1944? A. Yes.

Q. You haven't received anything for '45 except the payments made to you every two weeks?

A. That's right.

Q. These two slips you have offered here are further payment to you, one you believe for 1943 and one for 1944?

A. One, I know, is for 1944—the date is on it. The other I am not sure.

Q. You think it might be '43?

A. Yes, judging by the percentage that is listed on there and comparing them with other slips, that's my conclusion.

Q. Now, can you tell the Court how these additional payments were made—how they were based?

A. Not entirely, no.

Q. Do you know anything about it at all?

A. Well, made on [221] profits made by the dairy, and prorated back to the dairymen.

Q. Could it be on profits made by the Association—the entire co-op?

A. Well, not my understanding of it. If the co-op had made anything, say, in the Trading Post, I would have received certificate of equity for my percentage of trading there, and the same in the garage and warehouse, and so forth. In fact, I did,

(Testimony of Clarence Quarnstrom.)

receive certificates of equity for any profits that were made in the other departments in addition to the cash that I received from the dairy.

Q. You were entirely satisfied, were you, Mr. Quarnstrom, with the settlement made with you in 1943?

A. Not knowing the figures, and not being definitely interested in—I was satisfied, yes.

Q. At any rate, you were well enough satisfied so you didn't go checking up further?

A. That's right.

Q. And the same thing is true of 1944?

A. I was, yes.

Q. And 1945, since there wasn't an extra payment, you are not satisfied?

A. And since looking into the accounts which were—of the Association, which were never made available to the members except on special request, and I don't know I am exactly satisfied with the settlement of '43 and '44 now.

Q. Now, the fact of the matter is, these accounts have been presented at each of the annual meetings, haven't they, ever since the co-op was started?

A. Did you ever hear about a mile of figures shot at you as fast as anybody could read and try to [222] segregate them?

The Court: Do not question counsel. You can explain anything you want to. He is not permitted to answer questions.

The Witness: Well, those have been submitted,

(Testimony of Clarence Quarnstrom.)

yes, in such a manner as seen fit by the Board of Directors.

Mr. Davis: And if you had wanted to you always had a right to go look them up?

A. Yes, but you had to exert your right and if you went into the office to receive some figures you were looked at as though you were—well, just a—someone trying to make trouble. The figures were not freely given you, in other words.

Q. Now, at this meeting last March or April, do you remember who was there?

A. Well, I think I know who of the Board of Directors were there.

Q. Will you tell us who they were?

A. L. C. Stock, for one, Virgil Eckert for one, Clarence Hoffman for another and Ray Rebarchek for the fourth. Those I know were there.

Q. That wasn't a Board meeting?

A. That wasn't a Board meeting.

Q. That was a meeting called by you fellows at which the members of the Board were invited to attend?

A. That's right.

Q. And four of them did attend?

A. That's right.

Q. And at that time you discussed milk prices in general? You spent the whole meeting discussing milk prices?

A. We spent the whole meeting discussing this particular case—[223] payment of milk for 1945.

Q. Well now, you said something like this, if I got it right: Said somebody asked either Mr. Stock or the Board as a whole: "Do you feel the dairymen



(Testimony of Clarence Quarnstrom.)

have this money coming?" And Mr. Stock answered: "I think you do, but I don't know how you can be paid." What money are you talking about, Mr. Quarnstrom?

A. I am talking about this \$57,000 overage in the dairy.

Q. Do you feel that the dairymen are entitled to all that \$57,000?

A. A large percentage of it.

Q. Do you think they were entitled to the money the egg producers put in, for instance?

A. Did the egg producers put in any money?

The Court: Do not ask questions.

The Witness: No, I don't feel we were entitled to money on eggs actually bought in the co-op.

Mr. Davis: How about the ice cream, popsicles, and so forth?

A. Inasmuch as some of the milk was used for popsicles and ice cream and so forth, I feel the dairymen should have a share of that profit.

Q. By share do you mean all of it?

A. No sir, I mean their just share.

Q. Who is going to figure that just share.

A. Well, it should—the co-op should be set up to do that.

Q. Now, you fellows here have sued for the \$57,000, or at least for your share of it, according to the milk produced by [224] 22 men. Do you honestly feel that the dairymen here—these 22 dairymen—are entitled to all that \$57,000, that is their proportionate share of it?           A. Yes.

(Testimony of Clarence Quarnstrom.)

Q. How do you figure that the co-op is going to operate if they do that?

Mr. Grigsby: Objected to as immaterial.

The Court: Overruled.

The Witness: I don't know just what you mean.

Mr. Davis: Well now, there have been some losing propositions in that co-op from the start, haven't there? A. That's right, I imagine—

Q. They have varied from time to time. The garage used to make money; in 1945 it lost. The Trading Post has made money on some occasions; in 1945 it lost. A. That's right.

Q. But there have always been some losing propositions, haven't there?

A. Yes. The losses have been made up, as I understand it—now, this might be right or it might not be right—by the consumer profits—profits that are distributed among—or, contributed by the farmers as well as the city dwellers in the store and garage and warehouse, on consumer goods, rather than on producer goods.

Q. As a fact of the matter, haven't certificates of equity been given to all the members on this consumer profit—the garage, the Trading Post, the warehouse?

A. Yes, but those certificates of equity, in my understanding, are not payable [225] unless the co-op has sufficient money and—I think, to leave a reserve even after they are paid of twice the amount of the indebtedness, so in my estimation the papers are practically worthless. At the present

(Testimony of Clarence Quarnstrom.)

time, they are worthless, until their due date. They are just not worth a penny.

Q. Well, by the same token, a government bond would be worthless until a due date, wouldn't it, because it isn't due yet?

A. It can be turned in for a percentage, though, I understand—I don't have any.

Q. All right, Mr. Quarnstrom, you don't know as to how these figures of the overage you got in 1943 and 1944 were arrived at? A. No, not exactly.

Q. You don't know what they used to start—what figure they used to start with, or on what basis it was paid out?

A. They used the profits from the dairy to start with.

Q. Now, you said that awhile ago. Do you know that was the case? A. Yes, the dairy profits.

Q. I asked you whether it wasn't, in fact, the profits of the co-op, which were used to start with?

A. Well, no, it wasn't.

Q. Now, the fact is the dairy in 1944 made a profit of some \$60,000, didn't it—the Dairy Department as such?

A. The Dairy Department, yes, made \$66,000, I think.

Q. Now is it your understanding all that \$66,000—or \$60,000—whatever it was—was distributed back to the milk producers?

A. No, it wasn't. There was a certain percentage of [226] it withheld by the co-op as profit made by the ice cream and eggs and so forth.

Q. That is your understanding as to what took

(Testimony of Clarence Quarnstrom.)

place?       A. That is my understanding, yes.

Q. Now then, if the management—the fellows that were in management—have testified that the profits that were distributed were the profits of the co-op as such—not the profits of any particular department—would you say they are wrong as to what took place?

Mr. Grigsby: Objected to as argumentative.

The Court: Objection is sustained.

Mr. Davis: That is all, Mr. Quarnstrom.

#### Redirect Examination

By Mr. Grigsby:

Q. Just one other question, Mr. Quarnstrom: Did you raise vegetables in 1945 also?

A. Yes, I did.

Q. Potatoes?       A. Potatoes.

Q. On one of the exhibits in evidence it is shown that the cost of produce, meaning vegetables—potatoes and other produce, outside of dairy products—is some \$76,000. That is for the year 1945. Also a similar amount is shown for the cost of produce in 1944. Now, were you paid in 1946 additional payments in addition to your share of that \$76,000 for the potatoes you sold in '45?

A. Well, I don't know just exactly what you mean, but I received an additional payment in 1946 besides the [227] advance price paid at the time of harvest for potatoes.

Q. When did you get that additional payment?

A. It wasn't very long ago. It was, I think,

(Testimony of Clarence Quarnstrom.)

September or October—last fall, almost a year after the potatoes were delivered.

Q. In 1946, then? It is in evidence that the books of the corporation show, Mr. Quarnstrom, that the Produce Department—that is, the department not including dairy products—cost of goods sold was \$76,976.05. Now, you sold them produce?

A. Yes.

Q. In the year 1945? A. Yes.

Q. And potatoes? A. Yes.

Q. Mostly?

A. Mostly potatoes. In fact—well, I will say mostly potatoes.

Q. Well now, do you know whether in addition to that \$76,976 the co-op paid further payments on potatoes, in 1946, to you as well as the other producers?

A. I wouldn't know whether it was in addition to that 76,000 or whether it was a part of it, but I think it was likely in addition to that. That 76,000 was set up, I imagine, at the time of the audit early in 1946.

Q. That audit covers the period ending November 30, 1945. Now, according to the audit it was made prior to February 11, '46. Was it subsequent to that? A. Yes, it was after that.

Q. It was after that you received additional payments for potatoes? A. Yes.

Q. And do you know whether the other members did?

A. Well, I know of several of them, personally, that did. [228]

(Testimony of Clarence Quarnstrom.)

Q. And was that a percentage? What was the percentage?

A. Percentage I couldn't give you, but I received \$88.00 additional payment on about 34 tons—about two and a half dollars a ton.

Q. About two and a half dollars a ton?

A. Roughly.

Q. Now, do you know where that money came from? A. No.

Mr. Grigsby: That's all.

#### Recross-Examination

By Mr. Davis:

Q. Mr. Quarnstrom, is there a proceeding before the co-op at the present time to suspend you for selling potatoes outside of the co-op?

A. Not that I know of.

Q. Don't know anything about it at all?

A. No, sir.

Q. Didn't you sell some potatoes last year outside of the co-op contrary to your agreement?

A. No, sir.

Q. This extra money that came to you in 1946, you don't know where that came from?

A. The co-op manager had his name on it, that's all I know.

Q. Yes, I know it came from the co-op, but you don't know from what source in the co-op? It might have been some potatoes were sold at that time, mightn't it?

A. Could have been.

(Testimony of Clarence Quarnstrom.)

Q. Potatoes as such are not sold every day like milk. They are sold as time goes on, aren't they? They are taken and gathered in one place and sold out over a period of quite a time?

A. Some of them are, and some of them are sold direct.

Mr. Davis: That's all. [229]

Redirect Examination

By Mr. Grigsby:

Q. Mr. Quarnstrom, was this \$88.00 that you got an additional payment for potatoes that you had already sold, that were produced in '45?

A. Yes, that was the final payment on potato pool—1945 potato pool, final payment.

Q. So that there was more money paid for potatoes produced in '45 than shows on this statement of February 11? There was additional money paid to the farmer?

A. It would appear that way. I don't know; I am not acquainted with their books.

Q. Now, Mr. Davis suggested something to my mind: Could that have been entirely from potatoes that had been stored and not marketed, or was it for potatoes that had actually been sold by the co-op, and sold during '45?

A. You asking me that question?

Q. Yes.

A. I think likely that most of those potatoes were sold during '46. Maybe I shouldn't say most of them, but some of them about—

(Testimony of Clarence Quarnstrom.)

Q. Some of them sold in '46? A. Yes.

Q. Well, do you know whether yours were?

A. Well, they were pooled. My individual potatoes were not recognizable after they were put in a pool.

Q. No. I am getting at: What does this \$88.00 represent? Does it represent an additional price for potatoes or some other potatoes you hadn't gotten anything for?

A. It represents additional payment for total number of potatoes I delivered in '45. [230]

Mr. Grigsby: That's all.

#### Recross-Examination

By Mr. Davis:

Q. Mr. Quarnstrom, fact of the matter is that the co-op sold some potatoes to Canada early last year, do you remember that?

A. They sold some of them, I imagine.

Q. Some they had in storage and hadn't been able to dispose of before that time?

A. That's right. Well, they had been put in a pool in '45 and they cleaned out the pool in the spring of '46.

Q. Yes. In other words, these were some additional sales of 1945 potatoes that probably the sales hadn't been made up at the time the report was made, isn't that it?

A. That's right. Evidently, that was after the potatoes had all been sold they divided the profits



(Testimony of Clarence Quarnstrom.)

in the potato pool and prorated them back to the farmer again, or else it was profits from the co-op. I wouldn't say.

Q. Out of that you got some \$88.00? That's all.

The Court: That is all. Another witness may be called.

Mr. Grigsby: Mr. Ising.

The Court: You may be sworn, then we will take a recess.

(Witness sworn.)

The Court: Court will stand in recess until 3:23.

(Whereupon recess was had at 3:13 o'clock p.m.)

#### After Recess

The Court: You may proceed, Mr. Grigsby.

#### WILHELM ISING

heretofore duly sworn, testified for and in behalf of the plaintiff as follows:

#### Direct Examination

By Mr. Grigsby:

Q. State your name, please?

A. Wilhelm Ising.

Q. You are the William Ising named in this lawsuit?

A. Yes, sir.

Q. When did you start selling milk to the co-op, Mr. Ising?

(Testimony of Wilhelm Ising.)

A. Well, I start selling first when—when the creamery start in we were shipping cream first, and then we were shipping milk, and I think it was the ninth of December, 1942, when I had my graded barn and establishment, when it started shipping Grade A milk—the ninth of December, 1942.

Q. Well, had you sold milk to the co-op before that?      A. Yes.

Q. And from what year?

A. I think it's about a year or two before, if I ain't mistaken.

Q. Now, you sold in '42, '43, '44 and '45—'46?

A. Yes.

Q. And now?      A. Yes.

Q. Now, how were you paid for your milk sold in '42 and from then on?

A. Well, I got paid twice a month, on down payments.

Q. And after that?

A. Afterward we received the balance according to the profit was made on the end of the year. [232]

Q. According to the profit that was made?

A. That was made—

Q. Now, did you ever, during any of those years, sell any milk to it—outright to the co-op—at a fixed, final price?      A. Not that I know of it.

Mr. Davis: I didn't hear your answer, sir.

The Witness: I said, not what I know of it.

Q. (By Mr. Grigsby): Mr. Ising, you heard the testimony of Mr. Quarnstrom with reference to a

(Testimony of Wilhelm Ising.)

meeting between you dairy farmers interested in this law suit?      A. Yes.

Q. And some members of the Board of Directors of the co-op?      A. Yes.

Q. Sometime last March or April?

A. Yes.

Q. Were you present at that meeting?

A. Yes.

Q. Do you know who put the question to Mr. Stock that was testified about?      A. I did.

Q. Do you remember what your question was?

A. Well, I asked the Board, I asked: "Now, you Board of Directors, do you admit that we have this money coming what is—this \$57,000?" And Mr. Stock says: "Yes," and I think it was Mr. Eckert, he says: "Where we going to get the money?"

Q. "Where are we going to get the money?"

A. Yes, he didn't know where he would get the money.

Q. Did any of the members of the Board deny you had the money coming?

A. No, they didn't.

Q. Oh, Mr. Ising, did you sell vegetables also in the year 1945?      A. No. [233]

Mr. Grigsby: Take the witness.

The Witness: I'm not quite sure. I think we did some of it. I think we did.

Q. That is, you did?

A. Yes; very little, though.

(Testimony of William Ising.)

Q. What's that?

A. I think it was a very little.

Q. Do you know whether you received any additional payments for your potatoes that you produced and delivered in '45—payments in '46?

A. Yes, I did. I think I furnished—I think 72 bags of potatoes and I don't remember exactly what I got on down payment on it, but at the end of it I got, I think it was around \$12.00 I think I got paid at the end of it for the potatoes.

Q. Additional?

A. I—something like that. I don't remember exactly the penny, but it was around \$12.00 what I got paid to the end of it.

Q. You mean after the season was closed?

A. After the pool was closed.

Mr. Grigsby: That is all.

Mr. Davis: No questions, Mr. Ising.

The Court: That is all. Another witness may be called.

Mr. Grigsby: Mr. Johnson.

ARVID JOHNSON

being first duly sworn, testified for and in behalf of the plaintiff as follows:

Direct Examination

By Mr. Grigsby: [234]

Q. State your name, please?

A. Arvid Johnson.

Q. Are you one of the claimants in this case?

A. Yes.

Q. How long have you sold milk to the co-op defendant?

A. Since the winter of 1940.

Q. And under what system of payment have you sold and delivered milk to the defendant corporation?

A. Well, my understanding was when we come in here, everything was sold on a pool basis.

Q. And that is from the time that you first sold milk?

A. From the time I came into the country.

Q. And when was that?           A. 1935.

Q. Now, with reference to milk: In 1944, it is in evidence here, that additional sums of money—you call them payments—were paid to the milk producers for the product of 1943. That was true in your case, was it?           A. That's right.

Q. Now, did you receive additional payments in 1943 for the '42 production?           A. Yes.

Q. And how far back did that go?

(Testimony of Arvid Johnson.)

A. If I recall, I think we received money in 1941 and also in 1944—that is, up to 1944.

Q. For the production of the previous year?

A. That's right.

Q. And in '45 you received money for the '44 production?      A. Correct.

Q. In addition to the down payments?

A. Yes.

Q. But in '46 you didn't get anything for '45 production?      A. That's right. [235]

Q. That's what we are suing for now. Did you sell produce also—vegetables?

A. Pardon—which year?

Q. In '45?      A. I sold some potatoes.

Q. What's that?      A. Potatoes.

Q. What quantity?

A. Oh, neighborhood of about 12, 13 ton.

Q. Now, I will ask you whether, for the potatoes that you produced in '45, in addition to what you got on delivery, you received further payments made in '46?      A. That's right.

Q. You did? Do you know how much a ton?

A. I think it was 57/100 of a cent on a pound.

Mr. Grigsby: 57/100 of one per cent? Take the witness. Wait a minute. Were you present at any of these meetings that have been testified about?

A. Yes.

Q. Were you present at the meeting some years ago in the fall of 1942, or thereabouts, when a discussion was had with the Directors about the price of milk? Were you present at that meeting?

(Testimony of Arvid Johnson.)

A. Yes.

Q. And was there a discussion there about reducing the advance?      A. That's right.

Q. Go ahead, now, and tell the Court what you heard there, as near as you can.

A. Well, on that meeting we were getting paid at a butterfat price of \$1.10 and their intention at that time was to reduce it to a dollar. One of our directors, or the general manager, made the statement that it didn't make any difference because at the end of the year we would receive all the [236] overages that was made by the dairy.

Q. You mean the profits or overage?

A. The profits.

Q. Excuse me for being leading. Was that about the time of that meeting, fall of 1942, close of the season?

A. Well, I couldn't say right off hand exactly the date, but it was in '42.

Q. Now, did you attend this other meeting that was testified about?      A. Yes.

Q. Last March or April?

A. That's right.

Q. Did you hear the question put to Mr. Stock that has been testified about?

A. That's right.

Q. Will you state your recollection of what occurred there at that time?

A. Well, my recollection is about the same as your other two witnesses.

(Testimony of Arvid Johnson.)

Q. Well, just state it in your own words, then, as near as you can.

A. Well, as near as I can state that, is like Mr. Ising: He asked Mr. Stock in regards to—if he—or if the Board felt that they owed us this money and they said they did and one of the members also stated that, “How are we going to pay?”

Mr. Grigsby: That is all. Take the witness.

Mr. Davis: Just a second, your Honor.

#### Cross-Examination

By Mr. Davis:

Q. Now, Mr. Johnson, isn't it a fact that there were no additional payments made in 1940 or 1941 or 1942 to the milk dealers?

A. That is very true. There was no additional payments [237] in '40. I don't recollect if there was in '41.

Q. Well, now, we all know there were in 1943—that is, in '44 for '43, and in '45 for '44. We know that. Do you recall any other years besides those two in which extra payments were made?

A. Yes, I do.

Q. What year was that?

A. Well, I haven't got the record of it, but there was one in '44, one in '43, one in '42 and one in '41, and I received—if you want to hear the figures, I received \$750 in '41, and a thousand and 80, if I recall, in '42, and the others amounted to over \$2,500 on the following two years.



(Testimony of Arvid Johnson.)

Q. Now, that is in addition, is it, to this bi-monthly payment?

A. That is the finals of the pools.

Q. Now, when you sold milk all these years, did you sell it as these other boys testified here? You got a check once every two weeks on the milk that you had delivered in the previous two weeks?

A. That's right.

Q. And you say all years since 1941, then—you are not sure about 1941—but all years since then you have received additional checks?

A. I have received additional checks for four years, from '44 back—or that is, up to the end of '44.

Q. '44, '43, '42, '41?           A. That's right.

Q. All right. Do you recall who was present at this meeting in the fall of 1942 in which you had this discussion you testified about?

A. Pardon? Who was president?

Q. Who was present? Who was there?

A. It was composed of [238] dairymen and I think the manager of the Association.

Q. And who was the manager of the Association at that time?           A. L. C. Stock.

Q. Were the Board of Directors present?

A. That I couldn't answer.

Q. You have particular recollection of Mr. Stock being there?

A. I have, and the creamery manager was there.

Q. And was this a meeting of the Board of

(Testimony of Arvid Johnson.)

Directors or a meeting of the milk producers, do you remember?

A. A meeting of the milk producers.

Q. At which Mr. Stock was present and the creamery manager was present?

A. That's right.

Mr. Davis: That is all, Mr. Johnson.

### Redirect Examination

By Mr. Grigsby:

Q. Mr. Johnson, have you any of the slips showing these additional payments with you?

A. I have for 1943 and '44. (Handed to Mr. Grigsby.)

Q. And here is one dated September 10, '45.

A. Well, that's for '44.

Q. Now, do you know—here is one undated for a thousand and 47 dollars. Do you know for what year that was?

A. Two of these are for '44.

Q. All right, this one for \$1182 is for milk produced in '43, is it?

A. That's right—these two. [239]

Q. And this '43 also?

A. Them are the second and final payments.

Q. For '43? A. This is for '44.

Q. And this one for '44?

A. No, both of these.

Q. I mean, this one and the one dated?

A. Yes.

Q. This check here, reading: "Second payment

(Testimony of Arvid Johnson.)

on milk pool: 20% of dollar value \$6187.25''; now, do you remember when you got that—what year?

A. Well, that was paid, I believe, in April of 1945 and the other one was paid along in September, 1945.

Q. Now, there must have been a first payment prior to that, then?

A. Well, your first payment is what you get every two weeks.

Q. Oh, I see. Now, these two, the white one and the one for the amount of 1237, are for '44 production?

A. That's right.

Q. The other two for '43 production?

(Witness nodded.)

Q. I am going to ask that these be admitted in evidence. They are similar to these others.

Mr. Davis: Those are two for the one year and two for the other?

(Mr. Grigsby handed slips to Mr. Davis.)

Mr. Grigsby: If the Court please, may I state to Mr. Davis that the witness testified that the down payment was that first one and this is the second payment and final one.

Mr. Davis: No objection.

The Court: It may be admitted. Do you wish to have four separate exhibits? [240]

Mr. Grigsby: Mark this the next number.  
(Handed to Clerk.)

(Testimony of Arvid Johnson.)

The Court: The next is No. 10. What will that be?

Mr. Grigsby: That includes two slips showing payments for production of 1943——

The Court: All right.

Mr. Grigsby: ——made in '44. This is——

The Court: No. 11 is two slips?

Mr. Grigsby: Would that be No. 11?

The Court: The next one is No. 11.

Mr. Grigsby: No. 11 would be slips showing payments made in '45 for '44 production.

The Court: Very well, they may be admitted and appropriately marked.

(Plaintiff's Exhibits Nos. 10 and 11 admitted in evidence.)

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### PLAINTIFF'S EXHIBIT NO. 10

Remittance Advice—No Receipt Required  
Matanuska Valley Farmers Cooperating Association

Date of Invoice	Description	Gross Amt.	Discount or Deduction	Net Amt.
	Final payment—milk and cream pool			
	Total amount purchased	\$5237.20		
	22.579% of "Dollar Value" purchased	\$1182.51		
	Less 2% statutory reserve	23.65		
	Final payment			\$1158.86
	* * * * *			
	Second milk pool advance:			
	Total amount purchased	\$5237.20		
	20% of dollar value purchased	\$1,047.44		
	Less 2% statutory reserve	20.95		
	Amount of second advance			\$1026.49

[Endorsed]: Filed August 5, 1948.

(Testimony of Arvid Johnson.)

PLAINTIFF'S EXHIBIT NO. 11

Johnson, Arvid	Final Payment on Milk Pool September 10, 1945
Total dollar value production \$6187.25 x 21.125% .....	\$1307.05
Less 2% S.R. ....	26.14
Net amount of draft .....	\$1280.91

\* \* \* \* \*

Remittance Advice—No Receipt Required  
Matanuska Valley Farmers Cooperating Association

Date of Invoice	Description	Gross Amt.	Discount or Deduction	Net Amt.
	Second payment on milk pool			
	20% of dollar value			
	\$6187.25 x 20%	\$1237.45		
	Less 2% reserve		\$24.75	\$1212.70

[Endorsed]: Filed August 5, 1948.

Mr. Grigsby: That's all.

The Court: That is all, Mr. Johnson. Another witness may be called.

Mr. Grigsby: I would like to ask Mr. Ising, from where he sits, if these are your slips?

Mr. Ising: Yes.

Mr. Grigsby: For '43 and '44?

Mr. Ising: Yes.

Mr. Grigsby: Have you any for previous years?

Mr. Ising: No. [241]

The Court: He had better come up here.

Mr. Grigsby: I would like to recall Mr. Ising.

The Court: You may come up here, Mr. Ising, and take the witness stand. Counsel may come up here if he wishes.

## WILHELM ISING

heretofore duly sworn, resumed the stand and further testified as follows:

## Direct Examination

By Mr. Grigsby:

Q. Mr. Ising, will you look at these slips? What is that one you have—that white one?

A. This is: "Total Dollar Value Production \$4158.28." And the last——

The Court: Speak up, Mr. Ising.

The Witness: It says here: "Final Payment on Milk Pool, September 10, 1945."

Q. (By Mr. Grigsby): Well, you needn't read the rest of it unless Mr. Davis insists. Now, when did you get that money?

A. This here, we got that late——

Q. Well, did you get it on the date it says?

A. Yes.

Q. Was that for '44 production?

A. Yes. I think it is—I am pretty sure it is.

Q. Well, was it the production of the previous year? A. This year?

Q. Of the previous year? Now, this final payment on milk pool, September 10, 1945—was that a final payment for milk—— [242]

A. No, that was when I received it.

Q. Well, for the milk sold in '44?

(Witness nodded.)

Mr. Grigsby: We offer this in evidence and ask that it be marked Plaintiff's Exhibit No.— —

The Court: 12.

(Testimony of Wilhelm Ising.)

Q. (By Mr. Grigsby): Now, have you any there for any production in '42?

A. I got another one here, I guess, for the same year. Says: "Second payment on milk pool, \$831.66."

Q. Is that for '44 production?

A. I think it is.

Mr. Grigsby: I ask that it be marked Plaintiff's Exhibit 13. (Handed to Mr. Davis.)

Mr. Davis: I would like to see 12, too.

Mr. Grigsby: May I have these marked, your Honor, as one exhibit?

The Court: They may both be marked as Plaintiff's Exhibit No. 12. That is two slips for 1944, is that right?

Mr. Grigsby: Yes, paid in '45.

(Plaintiff's Exhibit No. 12 admitted in evidence.)

PLAINTIFF'S EXHIBIT NO. 12

Remittance Advice—No Receipt Required  
Matanuska Valley Farmers Cooperating Association  
Palmer, Alaska

Date of Invoice	Description	Gross Amt.	Discount or Deduction	Net Amt.
	Second payment on milk pool			
	20% of dollar value \$4158.28 x 20%	\$831.66		
	Less 2% reserve		\$16.63	\$815.03
	• • • • •			
Ising, Wilhelm				
				Final Payment on Milk Pool September 10, 1945
	Total dollar value production \$4158.28 x 21.125%			\$878.43
	Less 2% S.R.			17.57
	Net amount of draft			\$860.86

[Endorsed]: Filed August 5, 1948.

(Testimony of Wilhelm Insing.)

Q. (By Mr. Grigsby): Now, have you anything there for '43?

A. Yes, there's one here; it says: Final payment on cream or milk pool. Here's the first one; here's another one—it says: Second milk pool advance. This one is \$779.17, and the other one—the second one—is \$690.17.

Q. And do they both appear to be a percentage of the same [243] amount, 3450.85?

A. Yes. Yes, I think—I am pretty sure.

Q. Do you know for what year's production that was?

A. That must have been for '43.

Mr. Grigsby: We offer these as one exhibit.

The Court: They may be marked as Plaintiff's Exhibit No. 13 and received in evidence.

(Plaintiff's Exhibit No. 13 admitted in evidence.)

### PLAINTIFF'S EXHIBIT NO. 13

Remittance advice—No receipt required  
Matanuska Valley Farmers Cooperating Association  
Palmer, Alaska

Date of Invoice	Description	Gross Amt.	Discount or Deduction	Net Amt.
	Final payment—milk and cream pool			
	Total amount purchased	\$3450.85		
	22.579% of "dollar value" purchased	\$779.17		
	Less 2% statutory reserve	15.58		
	Final payment			\$763.59
•	•	•	•	•



(Testimony of Wilhelm Ising.)

Second milk pool advance:

Total amount purchased \$3450.85

20% of "dollar value" purchased \$690.17

Less 2% statutory reserve 13.80

Amount of second advance \$676.37

(Wm. Ising)

[Endorsed]: Filed August 5, 1948.

Mr. Grigsby: Now, have you another slip there?

A. I got one more here—this one. There's no date put here—it's just a stub taken off from the check, but I am pretty sure it is from the year before, 1942. It says \$605.55.

Q. Now, it is dated here. A. Is it?

Q. 4/24/43.

A. '43—well, that's when we got it paid. That must have been paid for that year '42—three, four, that's right.

Q. Well, now, you never did get similar slips to this when you delivered your milk, or every two weeks?

A. No. No, this is for when we—the milk pool got closed on the end of the year, and what was made by the dairy—that's our last milk payments.

Q. Now, I'll call your attention, Mr. Ising: This reads: "Date of Invoice, 4/24/43." That would be April 24, '43. "Final payment on milk pool, \$605.55." Now, would that be for the final payment on milk sold during the previous year—previous to '43? A. Well, I guess it is. [244]

(Testimony of Wilhelm Ising.)

Q. Well, you never got any of those currently, did you, as you went along? A. No. No.

Q. Well, don't you know whether it was?

A. No. We never got them. We just got them on the end of the year when the year—when the books was closed, I guess in November, and afterwards when we had our main meeting, then we got these.

Mr. Grigsby: I ask that this be marked Plaintiff's Exhibit 14.

The Court: It may be admitted, without objection.

(Plaintiff's Exhibit No. 14 admitted in evidence.)

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### PLAINTIFF'S EXHIBIT NO. 14

Remittance Advice—No Receipt Required  
Matanuska Valley Farmers Cooperating Association

Date of Invoice	Description	Gross Amt.	Discount or Deduction	Net Amt.
4/24/43	Final payment on milk pool 2259.13# butterfat @ .26804			\$605.55

(Wm. Ising)

[Endorsed]: Filed August 5, 1948.

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Mr. Grigsby: That's all, Mr. Ising.

The Court: Is there any further cross-examination?

(Testimony of Wilhelm Ising.)

Cross-Examination

By Mr. Davis:

Q. Did you say, Mr. Ising, that you didn't get slips as you sold your milk, every two weeks?

A. We always get a slip, but not like these.

Q. Not a slip that says "final payment" or anything like that? But you did get a slip right along, didn't you?

A. Yes, we get a slip that says how many pounds of milk I delivered, what test I got and the price of it and the amount of money.

Q. Do you have any of those slips?

A. I might have one, I am not sure, but I know I got them out home. No, I don't think so. [245]

Mr. Davis: Thank you, Mr. Ising, that's all.

Mr. Grigsby: Mr. Cope.

The Court: Mr. Cope may be sworn.

JOHN LYLE COPE

being first duly sworn, testified for and in behalf of the plaintiff as follows:

Direct Examination

By Mr. Grigsby:

Q. State your name, please?

A. John Lyle Cope.

Q. Are you one of the complainants in this case?

A. I am, sir.

Q. How long have you sold milk to the defendant corporation? A. Since 1939.

(Testimony of John Lyle Cope.)

Q. And do you know how many years back you can testify to that you have sold milk and received a payment or amount of money as delivered every two weeks, and subsequently further payment?

Mr. Davis: I object to the question; it is improper.

Mr. Grigsby: All right. Go ahead and tell how you sold your milk?

The Court: Go ahead and answer.

The Witness: We sold our milk according to contract, that is, Paragraph No. 7. It was our understanding, anyway—an advance price of so much—that varied. Sometimes they raised the price of milk during that time, but it was paid to us as an advance, and at the end of the year after the cost—a reasonable cost for handling charges—from other overhead of other different departments— [246] and I believe it is based upon the dollar value of the amount of business that is done in each department, and that is prorated over the whole thing, and then what is left, according to our audits, at the end of the year—up until 1945—we received this additional advance payment and also the final payment.

Q. Now, for what year did they first commence using that system—for what year's production?

A. Well, I think without a doubt that the books will show that I have received a dividend—or a—not a dividend, but a payment—a final payment—the milk pool every year the co-op has operated up there starting under Mr. Stock's management, and

(Testimony of John Lyle Cope.)

I am positive in my own mind, although I have no record—I might get that record from the ARRC—that we received one payment in 1939. It was a very small payment.

Q. For a previous year's production?

A. Yes, sir. Now, I don't say that that was an overage—I wouldn't say—but we did receive either a dividend or an overage.

Q. Well now, for the production of 1940, can you state whether or not you received additional payments in '41?

A. No, I can not testify to that, but I believe that I did.

Q. Now, for the production of 1941, can you say whether or not you received additional payments in '42?

A. I believe that I did. I have no record to show. It probably is on the corporation books—or the co-op books—that I did.

Q. Well now, in 1943 did you receive any additional payments [247] for milk you sold and delivered in '42?      A. I believe I did.

Q. Have you any slips there with you?

A. Yes, sir. Yes, I received final payment on milk pool, 3556.39 pounds of butterfat—I believe that's—\$953.26. That is for the year—the check was made out in '43, but it is '42 production.

Q. The check is made out here on the date 4/24/43?      A. That's right.

Mr. Grigsby: We offer this in evidence and ask that it be marked.

(Testimony of John Lyle Cope.)

Mr. Davis: Is that a similar slip to the one Mr. Ising had for the same year?

Mr. Grigsby: Yes.

Mr. Davis: No objection.

The Court: It may be marked Plaintiff's Exhibit No. 15.

(Plaintiff's Exhibit No. 15 admitted in evidence.)

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PLAINTIFF'S EXHIBIT NO. 15

Remittance Advice—No Receipt Required  
Matanuska Valley Farmers Cooperating Association

Date of Invoice	Description	Gross Amt.	Discount or Deduction	Net Amt.
4/24/43	Final payment on milk pool 3556.39# butterfat @ .26804			\$953.26

[Endorsed]: Filed August 5, 1948.

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Q. (By Mr. Grigsby): What other slips have you there?

A. I have two others here for the same year. There is no date, but I believe it is for '44 production.

Q. '44 or '43 production?

A. I believe it's '44. I am not positive. It is either '43 or '44.

Mr. Grigsby: All right, we offer them in evidence.

The Court: If there is no objection they will be

(Testimony of John Lyle Cope.)

admitted as Plaintiff's Exhibit No. 16, the two together.

(Plaintiff's Exhibit No. 16 admitted in evidence.) [248]

PLAINTIFF'S EXHIBIT NO. 16

Remittance Advice—No Receipt Required  
Matanuska Valley Farmers Cooperating Association

Date of Invoice	Description	Gross Amt.	Discount or Deduction	Net Amt.
	Final payment—milk and cream pool			
	Total amount purchased \$5766.21			
	22.579% of "dollar value" purchased	\$1301.95		
	Less 2% statutory reserve	26.04		
	Final payment			\$1275.91
	* * * * *			*
	Second milk pool advances:			
	Total amount purchased \$5766.21			
	20% of "dollar value" purchased	\$1153.24		
	Less 2% statutory reserve	23.06		
	Amount of second advance			\$1130.18

[Endorsed]: Filed August 5, 1948.

Mr. Grigsby: Did you say what year?

A. I believe those are for the year '44; it might be '43.

Mr. Grigsby: Take the witness.

Mr. Davis: No questions.

Mr. Grigsby: Now, I ask Mr. Davis: We had some conversation—I didn't have time to reduce this to writing, but I ask whether or not counsel

will stipulate that the remaining claimants will testify in substance that for the year's production commencing with '42 and '43 up to and including '44, they have, after the close of the year, received substantial sums of money as second and final payments—in substance as these witnesses who have been on the stand have testified?

Mr. Davis: I will, subject to the provision that, possibly, some of your men were not operating that far back, I don't know. I am willing to stipulate, your Honor, that any of the assignors who were selling milk as far back as 1942 would testify as Mr. Cope and Mr. Rempel and Mr. Quarnstrom have testified as to how their payments were made. Is that what you wanted?

Mr. Grigsby: Yes. That is to save the trouble of bringing that many more witnesses in here from Matanuska.

The Court: Very well, the record will so show.

Mr. Davis: That stipulation will be something to the effect that they received payments biweekly, based on the amount of milk sold at such and such a fixed price, once again not saying the price was to be the final price, but on a fixed basis, and then [249] at the end of each year received additional payments. That is what you wanted?

Mr. Grigsby: Now, I will ask the defendant corporation if they can bring the figures in showing what total of additional sums paid to farmers in 1946, for produce sold in '45? Have you those figures?



Mr. Davis: Would that be produce sold in '45? Some of those, I understood, weren't paid until '46.

Mr. Grigsby: Not finally marketed, but sold by the farmers.

Mr. Davis: Oh, sold by the farmers? All right.

Mr. Grigsby: If the Court please, it is after four.

The Court: Very well, the trial will be continued until tomorrow morning. Do counsel and the parties want to begin before ten o'clock?

Mr. Grigsby: It is pretty hard for them to get in before ten o'clock.

The Court: Very well, continued until ten o'clock tomorrow morning. Anything else?

Mr. Davis: Your Honor, as I previously mentioned, I plan to leave here on Wednesday noon for Seattle and plan to be gone about a week. Now, I don't intend at this time to have the defendant's case take very long. I am wondering how much longer Mr. Grigsby is figuring his witnesses will take?

Mr. Grigsby: Well, with the exception of one more claimant whose testimony I would like to have in, it is covered by the [250] stipulation, but I expect to call one witness to testify along the lines the others have and also to recall Mr. Snodgrass briefly and to call Mr. Stock. I think I can finish by noon, unless the defendant——

Mr. Davis: Well, since you have called Mr. Snodgrass and you have called Mr. Allyn, and you intend to call Mr. Stock—in general, your Honor, that will be the defendant's case here. We also intend

to call Mr. Eckert; possibly one or two other witnesses, briefly. But if Mr. Grigsby can be through by noon tomorrow, I think we certainly can be through by four o'clock. At least, I hope we can.

The Court: Perhaps the number of witnesses present will be so reduced, if necessary, we can continue on late enough tomorrow to put in all the testimony.

Mr. Davis: I would like, if possible, to clean up the testimony tomorrow because I plan to be gone the following day and, of course, as far as argument goes, I expect we can take care of that at a later date when these parties don't need to be here.

The Court: Well, the Court will be glad to accommodate the parties and counsel. If nothing further, court will stand adjourned until tomorrow morning at ten o'clock.

(Whereupon adjournment was had at 4:05 o'clock p.m.)

(On Tuesday, April 8, 1947, the following proceedings were had:)

Mr. Grigsby: Is Mr. Allyn here? Well, will Mr. Snodgrass [251] take the stand?

The Court: Mr. Snodgrass may resume the witness stand.

ROLAND SNODGRASS

heretofore duly sworn, resumed the witness stand and further testified as follows:

Redirect Examination

By Mr. Grigsby:

Q. Mr. Snodgrass, it was testified to here the other day, I believe, by Mr. Allyn, that in 1944, after the additional payments for 1944 milk had been paid to the farmers, there was a remaining balance, I believe, of some 18,000 and some odd dollars still on the books as net profits of the dairy-creamery. Do you remember that?

A. Well, I would remember this much: There was a balance left.

Q. There was for '44?

A. Yes, that's right.

Q. It was about \$18,000?

A. I believe that was substantially it.

The Court: It was about what, Mr. Grigsby?

Q. (By Mr. Grigsby): Something in excess of \$18,000. Now, I will call your attention to his testimony to the effect that for '45 operations it was estimated that the creamery branch of the dairy-creamery business made about \$20,000 profit. Do you remember that testimony?

A. I don't recall that exactly, but I have seen the sheet on which he worked it out. I believe that's about right. [252]

Q. I mean, you believe that's about what he testified to?

A. Yes, I believe so.

(Testimony of Roland Snodgrass.)

Q. Now, do you know yourself anything about what the creamery made in net profit in '45?

A. All I would know myself is from seeing the audit which I have seen just for a short time and from Mr. Allyn's working papers.

Q. Well, Mr. Allyn wasn't here at that time?

A. No. You see, his papers are summary of work done previously.

Q. Do you know as a matter of fact whether the creamery made anything?

A. Well, the creamery operations, the way they were conducted, must have made a profit. The audit furnished by Neill, Clark and Company shows that the combined creamery and dairy made a profit, so I would assume that the creamery made a part of that profit. You are speaking of the creamery as separate from the creamery and dairy, don't you?

Q. You just assume it, but you don't have any figures to show it?

A. Except the figures of the audit and the breakdown made by Mr. Allyn.

Q. Well, Mr. Allyn hasn't produced any such audit and breakdown in court, to your knowledge, has he?

A. I couldn't recall that. I don't know.

Q. Now, on Page 3 of the audit of 1945 operations there is an item of comparison of the two periods, 1945 and 1944: "1945, Dairy-Creamery" net profit, "\$57,001.58; 1944, \$18,943.42." And then under the heading of "Increase," increase of dairy-creamery [253] \$38,058.16, apparently showing an

(Testimony of Roland Snodgrass.)

increase of the net profits of the dairy and creamery of \$38,000 and a little over for the operations of 1945 over those of '44. And then there is a note: "After giving effect to additional payments to milk and egg producers of \$47,528.40"; that is for 1944. So, as a matter of fact, there wasn't an increase in profit in 1945 over '44, was there?

A. That's right, there was not.

Q. In other words, the net profit in '44 was 18,943 plus 47,528, or about 66,000?

A. I believe that's correct, yes.

Q. So that there was left remaining there to the credit of the net profits of the dairy-creamery for the year 1944 the sum of \$18,943.42? Now, you were manager at that time: Do you know what use was made of that money?

A. Of that 18,000?

Q. Yes.

A. Well, specifically, that money, I don't know, but I know what should have happened to it.

Q. Well, what should have happened to it?

A. What should have happened to it was whatever percentage or whatever part of that per cent in the total profits of the Association as a whole would go over into the balance sheet as undivided profits and then would later be set up on certificates of equity, which would be paid back to the producers, although it might not necessarily be in that department.

Q. Well now, do you know on what basis that they paid the milk producers and egg producers,

(Testimony of Roland Snodgrass.)

that is, the dairy and creamery, additional payments of \$47,528.40 out of this net profit of something over \$66,000, and held out the \$18,000? How do they get at the figure of holding out \$18,000? Was it arbitrary?

A. Well, as I think I have said before, there is something arbitrary in it; it isn't altogether arbitrary, but as I explained before, the net profits of the Association that year—in 1944—this is the year we are talking of, isn't it?

Q. Yes, sir.

A. The net profits of the Association were some \$57,000.

Q. In '44?           A. In '44.

Q. Well, the net profits of 47,000 in '45, dairy-creamery—66,000 for dairy-creamery in '44?

A. Yes, but I was referring first to the net profits of the Association in '44.

Q. Well, on Page—

The Court: Pardon me, Mr. Grigsby, is there another copy of that statement available?

Mr. Grigsby: Yes.

Mr. Davis: There is one in evidence, your Honor.

The Court: All right, let me see the one in evidence.

Mr. Davis: There is also one of the '44 in evidence.

The Court: Well, I would like to see one copy. Mr. Grigsby has the exhibits, I understand.

Mr. Grigsby: Here is the copy of '45.

(Testimony of Roland Snodgrass.)

The Court: May I see the one you are inquiring from now?

Mr. Grigsby: That's the one. Now, on Page 4—which is a long sheet, your Honor—— [255]

Mr. Davis: If Mr. Grigsby is going to inquire of particular figures of Mr. Snodgrass, I believe Mr. Snodgrass ought to have a copy himself.

The Court: I think so, too.

Q. (By Mr. Grigsby): Well, he should have one whenever he requires it. Page 4 of the audit of 1945 operations shows a comparison of the net profit of the whole co-op for '45 and '44, total 1945, in the last column, net profit is \$2,889.27. That includes the rents from the dairy down here in town, which puts them over the top. You understand that, don't you—you got those figures before you?

A. Yes; I don't find the \$2,000 just as yet—the last column?

Q. The last column at the bottom of the column: "Net income for the year, \$2,889.27.

A. Yes, I have that now.

Q. And for '44 it is \$11,946.72?

A. That's right.

Q. And so that would be the co-op profit for '44, after them—assuming that they were entitled to that \$18,000? A. I believe that is correct.

Q. Now, will you tell me, if you can tell me, on what basis they paid the farmers \$47,000 additional payments for '44 and held out \$18,000 from the milk farmers? What did that \$18,000 represent?

A. Well now, as I understand it, Mr. Grigsby,

(Testimony of Roland Snodgrass.)

the \$18,000 was not determined specifically by itself. It was the balance left over by subtracting what had been determined to have been the part of the Association earnings earned on milk [256] and milk products sold.

Q. You mean the part that they earned in the creamery?      A. No. See——

Q. Well, that's what I am getting at.

A. You see, the \$18,000 is not determined directly. It isn't the prime figure. It is the balance left over of the shown creamery earnings after—starting with this process, the net profits of the Association were so great. The determination which is made is the part of those profits which were made on milk and dairy products, and by milk and dairy products—I mean, milk and milk products—and the \$18,000 is arrived at—that particular figure was the \$47,000. The \$18,000—it isn't the figure that is desired. The \$47,000 is the figure that is worked toward. Then by subtracting that—the \$47,000 from the departmental earning, as shown by this breakdown here—you get an \$18,000 balance.

Q. Now, Mr. Snodgrass, the figure 18,000 odd dollars that we are talking about is what is left after deducting from the net profits of the dairy-creamery of 66,000 some odd dollars the sum of 47,000 some odd dollars additional payments?

A. I think that is correct. The \$18,000, however, is not a pertinent figure. It isn't a figure which——

Q. It is what is left after making those payments?



(Testimony of Roland Snodgrass.)

A. That is right. It is a paper figure which is left after making those payments.

Q. I will call your attention to Page 16—Schedule 6, Page [257] 16—near the middle of the page is item (3), “20% additional payment to milk producers, 22,563.31”; “21.125%” payment to milk producers—“additional payment to milk producers, 23,355.89”; and further down: “Additional payment to egg producers, 1,609.20.” I don’t know if that is additional payments, but it is payments—but the total, 22 and 23, is 45,900 some dollars. Do you know what goes to make up the additional payments of 47? What makes that difference, as shown on Page 3: Additional payments to milk and egg producers, 27,528.40? A. 27,528.40?

Q. Yes, on Page 3?

A. Well, now, I may be incorrect in this, Mr. Grigsby, but if you will add just the thousands and hundreds I think you come, with those three items: 22,000 and 23,000 are 45,000, and the 1,000 of the egg production is 46,000. If you add the hundreds you have the 300, 500 and 600, which makes 1400, which brings you to 47,300 in those three items.

Q. Adding 23,563—

A. I just added the thousands and hundreds and I get 47,300.

Q. What sums did you add to get the 47,000?

A. If we skip all the tens and zeros, add 225, which is 22 and a half thousand—

Q. What’s that?

(Testimony of Roland Snodgrass.)

A. I added just the first three figures in the top two, and the first two figures in that egg——

Q. Of what item?

A. In the 22,563——

Q. Yes?

A. That is 22 and a half thousand, approximately; and 22 and a third thousand is 45 and 8/10 thousand; to that if you add one and 6/10 thousands, which is—you get so and so which [258] is substantially the figure you wanted.

Q. The item: "Egg Producers," 1609.20—you include that?      A. Yes.

Q. Was that additional payments to the egg producers?      A. I believe it was.

Q. All right, now: The total of that sum, subtracted from the net profits of the creamery and dairy, is what gives this figure of 18,000 some odd dollars?

A. Might I ask: Where is that figure?

Q. Exactly? Well, it's Page 3—\$18,943.42.

A. Yes, I believe that was the way that figure was derived.

Q. Now then, it is a fact, is it, it refers back to page 16? You have heard the witnesses on the stand who have put slips in evidence marked "20% additional payment on dollar value" and "21 and a fraction per cent"—you have seen those when I have offered them to Mr. Davis?      A. Yes.

Q. Now, each one of the milk producers—every one of them—for their product of 1944, in 1945 received two additional payments, didn't they?

(Testimony of Roland Snodgrass.)

A. Yes, I think that is correct.

Q. And each one received the same percentage on what they had already received?

A. If they didn't they should have.

Q. One a payment of 20 per cent and a payment of 21 and 12 and a half hundredths per cent?

A. That is right.

Q. And after that was made, which totaled this \$47,000, there was still 18,000 some odd dollars left, which is corrected to the [259] net profit of the dairy-creamery. Now, do you know how you determine these percentage payments? How did you decide to give them 20 per cent additional and then 21 per cent additional? Was that just arbitrary?

A. Well, as near as I can recall that—you know, where I always start—I start with the distributable earnings of the Association, and from that point, to determine where these earnings came from.

Q. Well, but you know where they came from, because you have got it in there in black and white?

A. Yes, but there were other departments furnished earnings.

Q. Yes, but you know what the egg and milk department had netted—you got it there before you, what you got from that unit?

A. That's right.

Q. And you paid them so much a pound as you got the milk. Then on a certain date in '45 after the audit is made, or before it is made but when you have your figures, you give them a 20 per cent additional payment, and then a 21 and 12½—on

(Testimony of Roland Snodgrass.)

what basis did you figure that? Or is it just you thought we will have that much and we are safe in giving them that?

A. All right, we will skip any starting point for a while. The second step in that is to try to split the creamery-dairy as nearly as possible into the dairy, which is said to be milk and include milk products, and the creamery, which is the other products manufactured mostly from supplies shipped in from the States—but the one, really, which handles the manufactured products is arbitrarily said to be the [260] creamery although, as we have mentioned before, it does get a certain amount of ungraded milk—and then by splitting off, actually, wherever is known the expenses—well, no, first—let's start: They both go on to sort of a profit and loss statement basis. The sales of milk, cream, buttermilk and cottage cheese are determined as nearly as possible accurately and those subtracted from the total sales of the creamery and dairy show, split off, first the milk sales determined by a process of addition, and the creamery sales which are really determined by a process of subtraction from the total sales of the department. Then the cost of goods sold, which is the second item: You see, it turns into what is in its way a profit and loss statement on the creamery and dairy except the creamery and cream products come from a process of subtraction from the total figures of the combined department. The cost of goods sold on the dairy part, which is the positive side of this—

(Testimony of Roland Snodgrass.)

the other one being the one determined by subtraction—the cost of goods sold is the one paid out for milk, and in this case for eggs, or any cream that might be bought from the farmer, and this is carried on down as far as it can by actual figures.

Then there comes—when you get into the point of splitting the labor, and in splitting the general overhead, you have, on the expense items, you have a hard one in which there is a certain element of arbitrary—well, there is an arbitrary element used in splitting that, inasmuch as both at Palmer and in Anchorage [261] —are you following this?

Q. Yes, I am trying to.

A. Both at Palmer and Anchorage we have the same men and women and the same buildings and the same heating and electrical equipment serving both. Well, they are serving both of these two halves that we are splitting this creamery-dairy into, really, just for the purpose of determining the profits made on milk, and the arbitrary elements get down in there where you have to split a man's labor and where you have to split the office labor and the insurance and the advertising—those things off into the two classes of production. So, the figures are exact so far as they can be carried down for the split of this department into two halves and the arbitrary element introduced into it is a matter of the best judgment of the accountant, the manager and the Board of Directors, as to what percentages of the expenses which are incurred—well, just an

(Testimony of Roland Snodgrass.)

illustration by one man who works on both milk and ice cream.

Q. Very well. Now, I asked you a while ago if this \$18,000 that you held out—kept—had any relation to what the Board estimated the creamery made, and you said it did not?

A. Well—

Q. Now, did it, or is that what you estimated the creamery made?

A. By a process of subtraction, by a negative process of figuring the thing out—I said, what the creamery made there is shown by subtraction.

Q. Is what?

A. Is shown by subtraction.

Q. Now, you haven't got any figures to show what the [262] creamery made?

A. No. You see, we have the figures for the creamery and dairy and then we attempt to split them as far as possible.

Q. Now, please just answer the question. The question is: You haven't any figures to show what the creamery made?

A. I think that is correct.

Q. Now, at the present time, Mr. Allyn is working on a system so you will have for this year, isn't he?

A. It is my understanding that he is.

Q. But you didn't have it then?

A. No, we did not have it then.

Q. You haven't got any figures to show of this milk that you bought from the farmers, for which you paid them \$136,000 in '46—or no, as they sold

(Testimony of Roland Snodgrass.)

it, '45—you don't know what part of that went to the creamery?

A. Would you repeat that, please?

Q. You don't know what part of that milk went into the creamery?

A. I don't believe there are specific figures for it.

Q. You got no figures to show it?

A. I believe that's right.

Q. And you were in the same fix as to the '44 operation?

A. And all previous.

Q. And so you had nothing to do but guess what the creamery part of your outfit made in '44?

A. Well, it's considerably better than a guess.

Q. Now, after the farmers sell their milk to this creamery down there, and after you buy powdered milk and extracts and [263] butter and whatever you use in making a product down there—from the time you buy the farmer's milk and these other things, then it is a co-op enterprise, isn't it—the co-op runs?

A. As I understand, the co-op runs the whole thing.

Q. Well, the co-op doesn't run Mr. McAllister's dairy, does it?

A. Oh, no, no.

Q. Well, you run that creamery down there?

A. That's right.

Q. And you run the Meat Department, don't you?

A. That's right.

Q. And the hotel and fountain, or whatever you call it?

A. Yes, we lease the fountain.

(Testimony of Roland Snodgrass.)

Q. The garage? A. That's right.

Q. And on all those other things that the co-op runs in '45 you lost money, but you just want to estimate to the Court that you made money on this creamery that you run, without any figures to show that you made a dime? You haven't got any figures to show you made a cent, have you?

A. Well, as I said, it is a great deal better than a guess. There are figures as far as possible to show specifically the specific expenses of the two—of the creamery and dairy parts of the whole, so far as they can be carried down.

Q. But you can't say, for instance, what you made on ice cream mix, can you?

A. No, because there has never been any point in determining that which would justify the expense of determining it. [264]

Q. Well, you have figures, haven't you, as to how much ice cream mix you sold to the Fort out here?

A. Yes, but I doubt if they have ever been added up. The basic figures are there.

Q. It was a large amount?

A. Yes, it was a large amount.

Q. And you didn't make any money on it, did you?

A. Well, that is quite a conclusion. We did.

Q. Well, you don't know, do you?

A. What do you call knowing?

Q. Well, do you know whether you made any



(Testimony of Roland Snodgrass.)

money selling ice cream mix to the Fort out here, or anywhere else?

A. Well, we know that we made money on that as well as we know we made money on milk because of this one particular thing: It does not take much more equipment, though the gross profit—that is, the cost of the goods sold with relation to the sales price—is the same in ice cream mix and considerably more on ice cream, and so we know we made money in both parts of it.

Q. Now, Mr. Snodgrass, you know what you paid the farmers for their milk, don't you?

A. That's right.

Q. And you got figures for it?

A. That's right.

Q. And you know what you got for the milk?

A. I believe that is correct.

Q. In town here, don't you? And you got the figures there what it cost you to handle that—something like \$83,000?

A. Well, as Mr. Allyn said, that particular figure is not by an accounting system determined to show the cost of handling milk.

Q. Oh, yes, it is—the handling of the milk and the dairy [265] products—it is \$83,000—you have got that. You have got every item, haven't you, in what you made out of the milk, but you haven't any item to show what your creamery made?

A. You know the reason, don't you?

Q. Because you didn't have the system you are inaugurating now?

(Testimony of Roland Snodgrass.)

A. Yes, but there has been a reason for keeping one-half of it and not the other half.

Q. All right, I don't care what your reasons are. The fact is you didn't keep the record?

A. We did not total the records. All the records are still in existence except one.

Q. You mean to say that you are as unaware that you made money out of the farmer's milk that you retailed here in Anchorage, or that you are in the same position with reference to the creamery that you know the creamery must have made money because the milk made money?

A. That's a matter of judgment.

Q. All right, now, everything else you run as a co-op lost money, didn't they?

A. Not everything.

Q. Pretty near everything?

A. Pretty near everything.

Q. Here is a garage down here. Every garage in town and in the division made money except the co-op garage, isn't that a fact?

A. I wouldn't be surprised. I think that is pretty close to right.

Q. Every store, every grocery store, that you know of in the Third Division made money in '45 except the co-op grocery?

A. I think that might be right. [266]

Q. And you want the Court to think, without any figures, that there is one thing down there that made money and you guess what it made?

(Testimony of Roland Snodgrass.)

A. No, we don't guess.

Mr. Davis: If the Court please, this is Mr. Grigsby's witness and he has no right to bully him. If he wants to ask questions, I have no objection.

The Court: Objection is sustained.

Q. (By Mr. Grigsby): Just another question: Now, in '45 in place of the books showing a net earnings of 66,000 as it did in '44, it shows net profit of the dairy-creamery of \$57,001 and some cents. That's right, isn't it?

A. I believe so, yes.

Q. Now, for '45 you didn't make any additional payments, of 20 per cent and 21 per cent?

A. No.

Q. Nor at all?           A. Nor at all.

Q. Now, those—I believe it is approximately \$136,131 that was paid for milk as it was delivered, or that is, biweekly, for the '45 production?

A. I understand that is right.

The Court: Court will stand in recess until 11:15.

(Whereupon recess was had at 11:05 o'clock a.m.)

#### After Recess

Mr. Grigsby: Mr. Snodgrass, I will call your attention to Defendant's Exhibit 3, being an exhibit which shows the amounts paid to the claimants in this case as they delivered this milk, and certain items as to costs of hauling, and so forth. Now, you had, in 1944, similar figures before you when

(Testimony of Roland Snodgrass.)

you made these [267] 20 per cent and 21 per cent additional payments?

A. Not the individual breakdowns before me—just the gross figures.

Q. But each man's slip that is in evidence here showed 20 per cent on dollar value and that was based upon what you had already paid?

A. That is correct.

Q. What I mean is, that if this Court should decide that the claimants here are entitled to the \$57,000 in controversy, then that would be apportioned among the milk producers in proportion to what they have already been paid?

A. I believe that could be the customary procedure, yes.

Q. For instance, if in '46 you had decided to give them 20 per cent additional payment as you did in '45, it would be 20 per cent of each of those totals?

A. I think that is correct, yes.

Q. I am just asking that as a method of computing how it would be prorated. Of course, that would include the milk farmers that are not a party to this law suit?

A. It would be the same, yes.

Q. It would be the same—as well as all others?

A. Yes.

Q. Now, I just want to ask you—your answer is confusing to me: This figure, \$18,943.42, which is set forth on Page 3, which you looked at, as the net profits of the dairy-creamery after making them the additional payments of \$47,528—the co-op

(Testimony of Roland Snodgrass.)

retained that sum and didn't pay it to the milk farmers?      A. No.

Q. Now, do you consider that that sum represented what the profit of the creamery was? Was it fixed that way, or was it just [268] arbitrary?

A. Well, since you ask—

Q. Can you answer that yes or no?

A. You ask me what I considered it. I consider it slightly less than the profits made on the creamery production.

Q. Well, now, how do you figure that the creamery made more than that, except by pure guess?

A. Well, with regard to the split of these expenses which were split arbitrarily, those, as far as could be determined, were specific expenses of the departments, that is, the cost of the goods sold as you split this department up. And when you get down to the split of the arbitrary—or to the arbitrary split of labor and general administration, those expenses there which were split by judgment and, therefore, somewhat arbitrary—at that time there was considerable argument among the Board as to how those expenses should be split. You couldn't—we didn't have time clocks held on the employees to see how many hours they spent handling milk and how many ice cream, so that particular split of those two expense items—the general administrative and the labor—which couldn't otherwise be split, factually, were split arbitrarily and at that time the Board considered

(Testimony of Roland Snodgrass.)

that it was probably the most fair to lean over backwards to put as much in as earnings of the creamery—or in other words, to throw enough of the expense to the creamery to make sure that the dairy expense was not excessive.

Q. Well, but you didn't have any figures showing what you paid for powdered milk or powdered eggs?

A. We did by subtraction. [269] The auditor had prepared the cost of goods sold, which is determined by the customary method of—he takes all the purchases by the creamery—

Q. But Mr. Snodgrass, I have asked, three weeks ago, to get the figures of that—what the cost of goods sold was—and you know what the cost of the milk you sold was because you gave me the figures for the \$136,000. A. That is right.

Q. I have asked you to get what the cost of your powdered milk was and what the cost of this and that item was that went into that creamery. Now, when you held out this 18,943 did you have those figures there? Did you make any computation?

A. Of the cost of goods sold in the creamery?

Q. Did you make any computations of the profits of the creamery whatever at the time you obtained this \$18,000—not since, but at that time?

Mr. Davis: Your Honor, I think Mr. Snodgrass ought to be allowed to answer a question without three more being asked.

Q. (By Mr. Grigsby): I think I have a right to finish my question in my own form.

(Testimony of Roland Snodgrass.)

A. Well, I will attempt again: The auditor prepared a statement showing the cost of goods sold by the creamery and dairy—that is, all the purchases. That is one, and that is a specific figure and was probably as exact as he could make it—perhaps completely exact. Now, it is customary in the Association to keep a running record of all the purchases from farmers. That is, in order to be able to divide up the income [270] of the Association, as we must by law, the record of patronage is kept so the office at almost any time has the figure on hand, and certainly at the end of each year, of exactly how much was paid to the farmers for milk. The auditor has prepared the total purchases of the creamery-dairy, but subtracting the amounts paid for milk from the auditor's figures of the total purchases for the combined department, you have split—the balance there is used, then, as the purchases of the creamery. But that balance doesn't say—as the one for the dairy, say—this is all milk—it doesn't say, this was so much powdered milk, so much eggs, so much dairloid. It simply says, this is the cost of the total goods used in process—

Q. All right, you have got that—the cost of the goods sold is \$176,000. That is in the statement?

A. Yes, or he had all the cost of goods sold as some \$176,000, and the Association, for purposes of distribution of its income, has kept carefully that \$136,000.

Q. That was paid to the milk producers?

(Testimony of Roland Snodgrass.)

A. Yes.

Q. Now, the balance of the 42,000, do you know where it went?

A. That balance of the 42,000, as I believe has been explained, was a lump figure which covered the purchase of butterfat, powdered milk, salt, deraloid, flavorings, and so forth—I believe eggs is in it also.

Q. And also the eggs that you sold here crated in Anchorage?

A. I think it is. I don't know for sure. [271]

Q. Which didn't go into the creamery at all?

A. Well, what do you mean, they didn't go into the creamery at all? You mean, didn't go into manufacture of supplies?

Q. Didn't go physically into the creamery, but into the market here and sold per dozen—that is included in that \$42,000?

A. Well, let's see. The eggs were handled like the milk, went through the same channel.

Q. All right, that 42,000 includes what you paid for eggs? A. I believe it does.

Q. Do you know what you paid for eggs you bought from the farmers?

A. No, I don't know, but the figure is also determined at the end of each year.

Q. And you can't give it to me now?

A. No.

Q. And you don't know what you made on eggs?

A. No, I don't know. I know we don't know what was made on eggs.



(Testimony of Roland Snodgrass.)

Q. What did you pay the farmers for eggs?

A. Well, that price is one which changes like milk and we haven't tabulated it up.

Q. About what did you pay them in '45 on an average?

A. Well, probably—as a guess—perhaps a dollar a dozen, although it probably ranged from 85c to \$1.15.

Q. Say an average of \$1.00?           A. Uh-huh.

Q. And you had to crate them and bring them in here, and what did they sell for on the market—on an average?

A. Customarily, about 10c more than we paid for them—sometimes 15c. [272]

Q. Did you make any money on eggs?

A. We have some years and some years we haven't.

Q. Do you know whether you made money on eggs in 1945?

A. Was any dividend paid on eggs in '45?

Q. What's that?

A. No, I don't think we made money on eggs in '45, but I couldn't say.

Q. Do you know how many dollars worth of eggs you purchased from the farmers in '45?

A. I don't, but—

Q. You testified about the percentage to the producer of milk sold outside being about 62 per cent, did you?

A. I said that I have discovered in written rec-

(Testimony of Roland Snodgrass.)

ords, magazines and books, where it has been that high. It averages somewhat under 50 per cent.

Q. But it has been as high as 62?

A. Yes, it has been.

Q. And now, did you read the report of the Agriculture Department that in 1944 it was about 62 per cent?

A. No, I haven't read that. Was that for the whole country, or was that for one locality or what was it? I didn't see it.

Q. That was an average for the whole country.

A. No; I have over here a number of figures, including the milk dealer report for practically all the large markets for 1945, which shows it ranged—well, this was July '45, although the figures were, I believe, put out each month, which showed it was 44 per cent in July of '45 and 49 per cent in July of '46.

Q. All right, now, did you find that in '44 the price received [273] on milk from the consumer was 19c a quart?

A. In what year?

Q. '44?

A. Where?

Q. Outside?

A. Well, I don't—I doubt if it is possible.

Q. —as compared with, for the same period where you got 30c—that is, the retailer got 30 here?

A. Well, that could have been possible in certain localities. It couldn't have been possible all over the country because the all-time high throughout the country for the month of July, at least, was 16.3 until 1946.

(Testimony of Roland Snodgrass.)

Q. Now, here, in '45, you got an average in '45 of 30c a quart, didn't you?

A. No, the average—that is the average retail price on the city market in Anchorage.

Q. And what did you get for the milk in quarts?

A. I might say first, to continue that: A considerable amount of it was sold to the Army at a lower price and perhaps as much as ten per cent was sold in Palmer at 25c, and some at 20.

Q. Of course, you didn't have to haul that?

A. No.

Mr. Grigsby: That's all.

#### Recross-Examination

By Mr. Davis:

Q. Mr. Snodgrass, you were one of the first of the Grade A milk producers for the Matanuska Valley co-op, were you not?      A. Yes, I was.

Q. I believe your number with the Matanuska Valley co-op—your dairyman's number—is No. 1, is that correct?

A. Yes, I [274] got that number one—it was the first Grade A dairy inspected by the Public Health Service in Palmer.

Q. Now, you have been, then, selling milk to the co-op since about 1940, is that right?

A. With, of course, the exception of the two years in which I didn't—specifically didn't. The same farm did and my father ran it.

Q. Your father ran it during the time?

(Testimony of Roland Snodgrass.)

A. That is right.

Q. Now, prior to the time that you sold milk to the co-op, I believe you sold cream on some occasions?

A. Yes, occasionally we sold some cream.

Q. But the dairy business as such, of the co-op, started about the year 1940, is that right?

A. Yes, between June 15 and June 24.

Q. Now, Mr. Snodgrass, during your tenure of office as a director and as a manager up there, has there ever been any such thing as the milk producers as against the co-op itself, or has this always been treated as the co-op?

A. Well, the business has always been conducted as the co-op until the distribution of the earnings of the Association, and then that becomes more or less specific. Until that time it is very much like coffee and sugar in the same store, until you begin to distribute the earnings.

Q. Now, you testified for Mr. Grigsby, here, about this breakdown between the creamery and the dairy. Will you tell the Court what happens when you make a cash sale, say through the dairy-creamery in Anchorage here? What happens to that sale? [275]

A. Well, the money, of course, simply goes down as cash sales and it is not shown whether it is from milk or from ice cream or from any other product. That is, on the cash sales.

Q. Now, that on the charge sales—on your cash

(Testimony of Roland Snodgrass.)

sales it just shows so much money in from the Anchorage Dairy? A. That is right.

Q. Which might be ice cream or cottage cheese or popcicles or bottled milk—might be any of them—or eggs? A. That's right.

Q. Now then, as to charge sales?

A. Charge sales, of course, are quite specific. They are for ice cream or milk or for any of the other items which are sold.

Q. Now, have those charge sales been analyzed to determine what proportion, at least, of the charge sales are dairy products and what are creamery products?

A. For the years—1944, certainly; I believe 1943 and 1945, have been—on the charge sales have been broken down exactly into the sales of milk and milk products and the sales of creamery products.

Q. Now, isn't that where Mr. Allyn—isn't that what he used as a basis for finding out what the breakdown was between these two departments within the department?

A. The ratio that existed by adding up all the milk sales and all the ice cream, popcicles and other credits, was used to split the cash sales. That was split arbitrarily, but it's the best figure for that purpose, since there was no other means of breaking the cash sales [276] down.

Q. Then the figures Mr. Allyn gives are not pure guesses?

A. They had behind them every bit of knowl-

(Testimony of Roland Snodgrass.)

edge we possessed, and that knowledge covered, perhaps, as much as 90 per cent or 80 per cent of the sales—certainly a preponderance of the sales.

Q. Now, from the standpoint of the co-op, is there any reason for breaking down the receipts of the creamery and the receipts of the dairy into two different categories?

A. From the standpoint of the co-op there is, and has been, no reason up until the point of distributing the earnings to patrons. However, it is considered at the present time that the system is inadequate, and that efforts will be made to break them down further in the future.

Q. Now, Mr. Grigsby was talking to you about the figure, \$18,900 here. Do you know what became of that \$18,900?

A. Well, you see, that \$18,900 is really a book figure. It is somewhat a fictitious figure. However, what happened to the money which was so represented was that since the rest was paid out, that particular part of the Association profits, which here shows as part of the creamery-dairy profits, was used to pay the—well, really, to plug the hole shown by the red figures. It would be used for—that is, that that, plus all the other black figures or departmental earnings, is used to first offset the losses in departments which still lose money and the balance remains—I think that balance of some 11,000, which might be partly creamery, [277] partly warehouse, partly store or anything else, which hap-

(Testimony of Roland Snodgrass.)

pened to make money, is set up as repayable to the patrons of the Association. Actually—

Q. Actually went to pay the operating and maintenance expenses of the co-op?

A. That is right, and whatever is left over is still refundable to the patrons.

Q. I think you testified the first time you were on the stand, some two or three weeks ago, that the pertinent figures here were the figures of the earnings of the Association—of the co-op—that the earnings of the different departments were merely departmental breakdowns for the purpose of showing which departments were losing money and which were not. Was that your testimony?

A. That's right.

Q. Is that still your testimony?

A. That is still it.

Q. Now, in the year 1944, the books show that the creamery-dairy department of the co-op, on this departmental breakdown, showed a profit of some \$66,000, I believe. Now, in that year the total Association also showed a profit of somewhat similar figure, did it not?

A. Well, it was a lower figure—1944, I think, was in the 50,000's.

Q. All right. Now then, when you got ready to distribute the profits of the Association in 1944 how was it done?

A. Well, as I said, they would start with the earnings of the Association, which is the maximum amount which could be distributed. The depart-

(Testimony of Roland Snodgrass.)

mental breakdown shows that greatest percentage of [278] that 57,000 came out of the creamery and dairy. The two other departments handling farmer's produce both showed in the red. So consequently, of the produce departments—that is, the departments which handled farmer's produce—which get cash dividends, the only one necessary to determine from the standpoint of cash dividends was the milk products. So that part of the Association profits which was determined to come specifically from milk products by the system which we have been going over here, was paid to the dairymen in cash.

Q. And that represented those two payments, one of 20 per cent and one of 21 plus?

A. Yes. The first one was made before the audit was complete. The Association accountant stated that we had enough safely to pay before the outside audit, and suggested that we make that payment because of the need for cash of all farmers, before the audit, and that we could make the final payment after the outside auditor had gone over the books.

Q. And then the second payment was made after the books were finally audited?

A. That is right. And then, of course, the remaining balance would be set up on—since it is made on what we would call consumer units—the warehouse, the garage and trading post—would be set up on ten-year notes and consequently wasn't—well, its setting up is deferred; it's simply held as distributable profits.



(Testimony of Roland Snodgrass.)

Q. Now then, for the year 1944, 40,000-plus of the net operating profit of the co-op was paid to the milk and egg [279] producers?

A. That is right.

Q. Out of an operating profit of something over \$50,000 that year?      A. That's correct.

Q. Now, that figure has nothing to do with the profits of the dairy department as such, except insofar as, since you figure the dairy department made most of the money, most of the surplus was distributed to the dairy department, is that correct?

A. That's correct.

Q. Now, is that the same way that the profits of the Association were distributed in 1943, Mr. Snodgrass?      A. That's right.

Q. Now then, if the same procedure were used for the distribution of 1945 net income of the Association, how much money would be available for distribution to all the producers?

A. Well, it would be—you see, the Association, in 1945, following the same custom, would consider that it had the \$2800 to distribute; that a certain percentage of that was made by the combined creamery-dairy; that of that a certain amount was earned on milk and milk products; and the balance was earned on creamy products; and it would, perhaps, mean—oh, not more than \$2,000 to distribute.

Q. And do you know whether or not an offer was made to these plaintiffs here—these milk producers—to pay them their share of that \$2800?

(Testimony of Roland Snodgrass.)

A. I don't know. I have heard such suggestions—either a suggestion or an offer made by individual members of the Board—but I don't think there is such a thing [280] as the Board action which would constitute the offer. But it has been stated individually, the question has been asked and the dairymen said—so far have not been willing to accept it.

Q. Now, was there any difference at all in the procedure that was followed in 1945—different from the procedure that was followed in 1944 or 1943, so far as payment of the milk producers was concerned?

A. No, there has been a slight difference in price, but not procedure.

Q. You mean they were paid more every two weeks than they were in '44?      A. That's right.

Q. But the procedure at the end of the year has been exactly the same?      A. That's correct.

Q. The difference between the two years being that there was a relatively small distributable profit in '45?      A. Made by the Association?

Q. The entire Association?

A. That's right.

Q. \$2800 as against \$55,000?

A. That's right.

Q. Now, we have talked considerably here, Mr. Snodgrass, about the way these inter-departmental overheads are allocated to different departments. Have you done some figuring to determine whether or not the creamery, dairy, by the way things

(Testimony of Roland Snodgrass.)

worked, actually contributed to a part of the loss of the store, for instance, or the garage—or, to put it another way, as to whether or not the store or garage actually contributed to the profit which the creamery showed?      A. Yes, I did. [281]

Q. Do you want a blackboard to explain how you arrived at those various figures?

A. Yes, I would like it. I would like to say one thing first: Why I got to wondering about it was because of two or three different occurrences—one at least two years ago and one recently—with the manager of the grocery. It has been customary among all the units to—the unit manager to object to the high overhead that they have to carry. For instance, I believe in this audit here—I believe it shows that the G&A charge—salaries, the office, the insurance, etc.,—

Q. You had better explain what you mean by “G&A.”

Mr. Grigsby: General Administrative?

The Witness: Yes, General Administrative—I believe it is charged to them at 12.494% of the total sales, and that means that if the Association sells a million dollars worth of goods that each dollar has knocked out of it before they start even paying their help—it has knocked out 12 and a half cents. And the grocery manager had decided that if he could get some wholesale business, which he would sell at landed cost plus ten per cent, he could boost his sales up and make money by it, which is obvious because he could do it with very little additional

(Testimony of Roland Snodgrass.)

expense and he could make cash by it; but he did notice that if he sold at cost plus ten per cent he would have a loss of 2.49 per cent on it because of this general overhead charge. Now, actually, if he did make these additional sales, he would reduce that 12.494 to, perhaps, 12 and a quarter, or if he made a [282] big increase in the total business of the Association, reduce it further. But as it was, for each thousand dollars that he would sell, he would not make money for himself—he would lose two and a half percent of that amount, which, of course, was \$25.00 on each thousand, which started him thinking: if he loses it, yet the Association makes it, it must appear in some other department. I ran into the same thing with the manager of the meat department when we worked on slaughtering pork for the Army, which we agreed to do and did on a basis of all costs plus five per cent. Yet, the five per cent was less than the general overhead charged against him and it would throw his department in the red which, of course, he objected to because it looked as though he were not properly managing the department. And so I worked out for my own satisfaction a rather fantastic profit and loss statement which shows the principle which operates, where any sale such as the cost-plus to the Army at a low profit, any wholesale in which the profit—although a real profit—is less than the general administration charge on the unit, or where the warehouse sales which we customarily make at a low mark-up plus a low discount, if the seed and

(Testimony of Roland Snodgrass.)

fertilizer are taken out of the car, and those sales all tend to throw the department involved into the red and to push the profits over into some department which does not have a similar sale. And so I made up a profit and loss statement, which is—all the figures are purely hypothetical—which simply shows the principle which [283] operates there—the shifting of the general administrative expense, which can show that one department, by going into the red, can force another department out of the red. And this is very true of the way—of what happens in these books, and it is true because of the fact that the high general overhead that we have, and always have had, is prorated—not arbitrarily—by the auditor, but it is prorated on the basis of the total sales of each department with, of course, the exception of the Produce Department, which has been set by the Board at a lower pro rata——

Mr. Grigsby: Which——?

The Witness: The Produce—that's 5/12—and this figure, as it is shifted around it can throw one department in the red and yet know you made money by going in the red and that money will appear in another department which has not altered its performance in any way—yet it will show an increased loss in your department on a transaction you made money on—like saying black is white—except any time any department considers making a large sale at a low price the manager discovers is going to lose money for his department, and knowing very well that he is still making money

(Testimony of Roland Snodgrass.)

for the Association, he objects to it because it looks like a reflection on his ability.

Mr. Davis: In other words, Mr. Snodgrass, the corporation books, as such, taken as a whole, reflect the matter correctly as to what profit is made, but your inter-departmental breakdowns [284] when they show a profit may be merely a paper profit, is that correct?

A. They can be so long as there is any difference in the rate of mark-up used by the two departments concerned—or any two departments.

Q. All right now, you figure your general administrative expense according to dollar value, don't you?

A. Yes, the auditor arbitrarily does that because he says you have no better basis, so he goes ahead and does it and he will throw a department into the red on that basis when that department could have—or perhaps actually did, make money.

Q. Now, supposing you have a department with a high volume of business and a low mark-up——?

A. If its mark-up over the cost of the goods and the cost of the labor is less than 12 and a half per cent that department will run into the red, but if it does actually make money, which it certainly may—if it makes \$1.00 over the cost of the goods and the labor and direct expenses, it does make a profit and yet it will show in the red.

Q. When we keep these interdepartmental breakdowns, then, does it tend to push the profits of one of these high-volume low-mark up departments into

(Testimony of Roland Snodgrass.)

the profits shown by another department with a high mark-up and, say, a low-volume—or, anyway, a high mark-up?      A. It does exactly that.

Q. Now, what are the departments in which that might occur at Palmer?

A. Well, the meat department when it was operated as a wholesale—or any wholesale business done by the meat department, [285] and specifically this one where I discovered this when it operated on a cost plus five per cent basis for the Army—any unit which does a considerable wholesale business at a low mark-up, for instance, the warehouse, which easily sells twenty to thirty thousand of seed and fertilizer at a low mark-up plus a discount, and it could also happen if the grocery department wholesaled on a cost plus five or ten per cent, or any percentage less than the 12.494—it would throw those departments in the red and the department which would come out are those departments which would have a high rate of mark-up—a mark-up over the G&A expense. What, in effect, is happening is that this additional sale which perhaps paid for the goods and all the cost of handling the goods, has lessened the burden of general overhead on all other sales, and consequently it increases the profits as shown in the departmental breakdown on all other sales, but it will definitely throw the department which makes it into the red, or reduce its profits.

Q. Under your theory, then, is it quite possible that this so-called \$57,000 paper profit of the dairy

(Testimony of Roland Snodgrass.)

department—dairy-creamery department for 1945, actually was contributed to by some of the other departments that show a paper loss?

A. Well, in this way: Supposing all the sales of the other departments were taken out—the departments were wiped out—and yet the Association as it was purchased from the Alaska Rural Rehabilitation Corporation had the same buildings and the same debt, the [286] office personnel could be cut down but for each dollar of sales it would be a higher figure. That would, perhaps, wipe out—if it was just the creamery and nothing else which had bought the physical set-up that the Association has, it would probably break even or lose money instead of showing a \$57,000 profit, or \$66,000 profit, and the only way to alter that situation would be to increase volume, either in that unit or to open up other units, because we have a high fixed overhead. And so, it simply means that each unit which is added to the dairy-creamery, or added to any existing business, tends to increase the profits of that existing business, although this additional unit may lose money on the departmental breakdown. That is, each additional volume of sales reduces the load on all business previously conducted.

Q. That comes because of the fact that the indirect overhead is put on the basis of dollar volume for the lack of some better way to break it down?

A. That's right.

Q. Now, isn't it a fact, Mr. Snodgrass, that the creamery, as such—the creamery-dairy actually con-



(Testimony of Roland Snodgrass.)

tributes more to the cost of operation of the power house, for instance, than other units?

A. Well, it contributes more to the cost of operation but, of course, it is charged more for the cost of operation. The only thing which isn't taken into account there, which perhaps could be solved two ways, is that the creamery-dairy need a high-pressure steam plant, whereas the others could operate on a low-pressure steam plant, which means it necessitates a slightly [287] higher cost of—well, it necessitates a more expensive form of heating. Now, that could be solved in another way by putting a small high-pressure steam plant in the creamery-dairy itself.

Q. Now, the creamery-dairy actually uses more steam than, for instance, the warehouse?

A. Oh, yes, considerably more.

Q. But the overhead of the power house is charged according to dollar volume in both cases?

A. Somehow, I thought there was an adjustment made. I may be incorrect. I thought the creamery was charged more because it used more. I could be incorrect.

Q. Well, I may be wrong in that case myself, although I believe the books show a regular dollar breakdown for the overhead.

A. Well, if the creamery even paid on a dollar value breakdown for the steam, then it is not being charged sufficiently.

Mr. Davis: Now, your Honor, I want Mr. Snodgrass to illustrate on the blackboard his theory, but

(Testimony of Roland Snodgrass.)

it is 12 o'clock—may we suspend at this time and take it up this afternoon?

The Court: At 1:30?

Mr. Davis: It is agreeable to me.

The Court: To you, Mr. Grigsby?

Mr. Grigsby: Yes, your Honor.

The Court: Court will stand in recess until 1:30.

(Whereupon recess was had at 12 o'clock noon.)

#### Afternoon Session

The Court: You may proceed, Mr. Davis.

Mr. Davis: Mr. Snodgrass, at this time will you take the [288] blackboard and explain to the Court the things you were testifying to this morning about the general and administrative overhead being proved, moving from one department to another in this interdepartmental breakdown?

A. All right. Now, first, none of these figures are actual. They are simply to show the principle of the movement of this heavy G&A expense we do have up there, the way it moves toward sales and the total effect on departments when broken down, but none of the figures are actual and there are only one or two actual facts which will come in after as examples of where these do happen.

First, if we assume that we have the cooperative set-up, that we purchased from the Farm Security and the Corporation up there at Palmer, and that it was all the same buildings and was exactly the same indebtedness as we undertook, and that it had

(Testimony of Roland Snodgrass.)

just exactly one business—that was the creamery business—it had the bulldings for other businesses and for the sake of just working in the terms of unity—because this is only to show a principle—we will assume the creamery had total sales of a million dollars in a year and we will set up its profit and loss statements as it might have occurred—just the basic items and profit and loss statement. So, we will assume the creamery-dairy profit and loss statement would look like this at the end of the year, if nothing else happened; that the sales were \$1,000,000; the cost of goods sold was \$600,000; then its gross profit on the transaction would be \$400,000; the operating expense, which would [289] be the supplies and labor and those things which can be directly charged to that operation, to have been \$200,000. And now, we have the net profit before the distribution of the general and administrative costs, which is—this is simply following the procedure that is shown in the profit and loss statement of the Association and also the breakdowns, and that I—and also the same system which is followed in the departmental breakdowns. The net profit before the distribution of the G&A costs would then be \$200,000. Now, distribution of the general and administrative expense would be the next deduction, and assuming it to be \$200,000, we would have a net profit on operations—net profit and loss of nothing. The Association would just break even under that condition.

(Testimony of Roland Snodgrass.)

Now, if, during the year—and I will take as an example, one additional—it will be this cost plus operation that we performed for the Army on processing pork for them in which they agreed to pay—it was really an argument over prices: Our prices were too high, so they ultimately agreed if we paid the farmers from whom we bought the pigs—if we paid them the Seattle OPA ceiling price plus the freight between here and Seattle on commercial carriers, that would be the first item on our invoice to the Army. It would be the cost of the pork at the rate of pork plus freight. The second item would be the exact cost of processing that pork, which would cost all the labor, all the supplies, the additional coal we used in the [290] slaughterhouse, the additional electricity that we used in processing and the additional refrigeration. And the third item was agreed to be five per cent of the gross sales price of this—for these invoices, which was a cost-plus basis, the cost being the amount paid for the goods—the amount paid to the labor and the amount paid for supplies—and then the Association was given a profit of five per cent of the total sales price. We arrived at that arrangement by considerable argument, and we did argue that that five per cent was less than our general administrative expense and they countered with this statement here: That since you will not have to build any more buildings, not increase your debt, you will not have to hire any additional office personnel, this five per cent will exceed any increase

(Testimony of Roland Snodgrass.)

in your general administrative expense. To which we had to admit. It would exceed any increase in it although it was less than the general average.

So once again, on the same basis, assume that we sold one million dollars worth of meat, and that sets up what would be—maybe this occurred just during the three months, but it would set up a meat pool which ultimately would be shown as part of, or all of, the Meat Department. We sold a million dollars worth of meat to the Army for which we paid the farmers \$700,000, which is the cost of goods sold, leaving a gross profit of \$300,000 from which we paid for labor and supplies \$250,000, which left us a net profit before distribution of general and administrative [291] expense of \$50,000.

Now, since we had already the general and administrative expense here in what would have been the Association had we not undertaken that transaction, the increase in general and administrative expense was—assuming this to be so—only \$10,000, and that is probably excessive because we would not have had to build any buildings, to depreciate them or increase our debt or increase our office staff by any more than that amount—which would have shown on that meat pool a profit of \$40,000.

Now, a parallel situation did occur, except that the amounts were about one-tenth all the way through—except by per cent it was the same. And, of course, this is three to five times as big as the dairy business. But this is only to illustrate a principle.

(Testimony of Roland Snodgrass.)

Now, at that point, for whatever did occur down here, I was approached by pork producers, who pointed out that we did make a profit on that and that, being a cooperative, we were supposed to turn the profit back to them. The Association took the assumption that since they did not bear a fair percentage of the increased cost on these profits made, they would not refund it. I said if the Association did make a profit and if that department did make a profit, they would refund it, but as it happened the Association stopped right there and paid out no more to the farmers. The invoice to the Army was the cost of the goods sold and the labor and supplies and the five per cent on gross sales, [292] or these three items here, for which they paid us \$1,000,000.

Now it stops in that condition there. This may have been just during August and September and October and that stopped. The operation was completed. Nothing was done until the auditor comes at the end of the year. He sets up the profit and loss statement for the Association and he says: "Your gross sales were \$2,000,000," which is the total of these two, and from now on we will use the totals of those across. The cost of goods sold was \$1,300,000. The gross profit was \$700,000. The operating expense was \$450,000. The net profit before distribution of G&A expense was \$250,000. G&A expense was \$210,000. Therefore, the net profit was \$40,000 made by the Association, which

(Testimony of Roland Snodgrass.)

has been transferred now out of that meat pool over to the Association.

Now, beginning at this point here the auditor will have the profit and loss statement of the Association in the procedure customarily followed, and then he will break it down into the departmental P&L's shown in that audit book. He will break it down and use all these figures which are still actual. They are compiled figures by process of each sale, or each purchase, of the labor payrolls, and so on, and he will come to this result: That the sales on the department—creamery-dairy—was \$1,000,000; and the sales on the department—meats—was \$1,000,000. The cost of the goods sold was the same as it was up there: Over here 600,000, and over here 700,000. The gross profit is the [293] same as it was up there: 400,000 here, and 300,000 over here. The operating expense is the same: 200,000 here and 250,000 over here. The net profit before distribution of G&A is the same: 200,000 here and 50,000 here.

(During all of this testimony of Mr. Snodgrass he was at the blackboard, writing as he talked.)

Now, the auditor says we have to distribute the G&A expense, which is \$210,000, and the only way we can do that is on the basis of dollar sales. So, he proceeds to distribute the G&A expense like this: \$105,000 here, and 105,000 here, and he winds up with a net result for departments of \$95,000 profit over here, and \$55,000 loss over here.

(Testimony of Roland Snodgrass.)

Now, that is what I was talking about this morning. That is, in principle—and this is only principle—is exactly what happens whenever we make any wholesale transactions at a low profit. We made money. Nevertheless, in these books the way they are handled because of the distribution of this general administrative expense on that basis, that simply throws the general administrative expense in a fluid manner over into the increase sales and it will throw it into the red in some other department. That is only a principle. It may be wrong, but it appears to happen whenever you contemplate a wholesale transaction with a low profit.

Mr. Davis: I think maybe before we go ahead, if either the Court or Mr. Grigsby has any questions on these particular [294] things, we might as well ask Mr. Snodgrass while he is on his feet.

The Court: The Court has no questions at this time.

Mr. Grigsby: Not I—I don't care to examine now.

Mr. Davis: All right, you can resume the stand. (Witness did so.) Now, Mr. Snodgrass, take the years 1943, '44, '45 and '46: Are there any milk producers on the Board of Directors during those particular years?

A. Well, there have been milk producers on all of those years.

Q. Thinking back over the various Board members, could you tell about what percentage of the



(Testimony of Roland Snodgrass.)

entire Board were milk producers during the various years?

A. Well, in the—as I recall, at the beginning of 1943 I was the only milk producer on the Board. During 1943 there were perhaps two more put on the Board by election. In 1944, I believe, there were four milk producers on the Board, and in 1945 at one time there were five.

Q. How many men are there on your total Board?

A. The total Board is seven except when there is a vacancy close to the end of the year which isn't filled.

Q. Now, having sat on this Board as you have, and having been manager, do you feel that the Board has been favoring the produce growers over the milk producers?

A. Well, I have never thought that. I have always—having had contact with the Board all but one year, I have always felt that the Board set down and tried to figure as fairly as they could to favor no group over [295] any other.

Q. And to handle the co-op as a co-op rather than a bunch of small groups?

A. I think—yes. I think that has been the consensus of opinion, although I imagine there have been times when one or more individual members have differed with that policy.

Q. Now, Mr. Grigsby here at the time testimony was being given prior to the time we resumed yester-

(Testimony of Roland Snodgrass.)

day, made some references to the fact that in 1946 it looked as if the produce dealers had received all the money received from their produce—or practically all. Do you remember that?

A. In—I remember something about that, yes.

Q. Now, Mr. Snodgrass, has there been a market for all the milk that could be produced during the last—oh, say, since 1940? Have you had a market for all the milk you could produce?

A. We had a market. We have been short of bottles, but there has been—well no, I better qualify that a little bit. There is a market, although during some months in a extreme peak of productive season, the supply will, you might say, it will rocket upwards faster than we reach out and get the market which is there for it, but faster than we contact the market, and at those times we will have a slight surplus. But as a general statement there is a sufficient market for all the milk that has ever been produced.

Q. In fact, most of the time, there has been a distinct shortage?

A. All the winters and—well, most of the time.

Q. Now, have you had to take any milk out and dump it because there was no market for it?

A. Though, as I spoke, if we have a very—a great rise over a period of a week or two weeks, we may get a surplus in that manner which we have to dump simply because we can't contact the market fast enough and the supply will be back to

(Testimony of Roland Snodgrass.)

normal before we have contacted that additional market, which is still there.

Q. Well, by refrigeration you can keep that milk over a certain period of time?

A. The period is too short and the volume too great for any holding capacity which we have. Milk is perishable.

Q. Now, let us think a little about produce—lettuce, celery, things like that. Is the same thing true as to the market of those?

A. No. During the year 1944 and 1943 the same thing was very nearly true. You could sell everything, practically, as fast as it came on and if you did get an over supply at any time it was for very short duration. You might get some spoilage, but on the other hand the commodities were not so perishable and could be held longer.

Q. Now, how about the last two years, for instance, on that sort of thing?

A. Well, agricultural production, as a general thing up there—that is beyond a certain point—is sort of a war baby. It mushroomed—it expanded rapidly when the development came here in Anchorage with the increase in population—that of Anchorage and the increase of population of Fort [297] Richardson—and production, especially in vegetables—that is, rapidly in vegetables and slowly in milk—has increased to meet that increase in population. However, in 1945 the population—the military population decreased considerably, and that was a market which—oh, in some commodities took

(Testimony of Roland Snodgrass.)

60 to 70 per cent of what we produced, and at that time in the vegetables which are—that is, the production of vegetables—can be increased easily, it had been moved up to within the seasons that we can sell the entire amounts that the military population, or the fort's, that we could contact could use. With the decrease in military population after the crops had been planted, we did have a considerable surplus of those items.

Q. Now, when you had a surplus in those items, what became of that surplus?

A. Well, we tried only one cure which was even reasonably good and very hard to perform, but it was to send a committee out to different growers—the committee consisting of growers—and pro rate the amount which those growers could bring in during any period of surplus. It was very hard and cumbersome, but it worked pretty well, except we—it was so hard to do to visit each little patch of lettuce, each little patch of each vegetable, in which there might be a surplus and set a ratio, or set a limit on the amount which would be received during any time, that the system fell down when this surplus became too great and we simply were swamped. We would have on hand hundreds—not hundreds, even thousands—of [298] crates of lettuce and celery which had been brought in and the Association accepted under the marketing contract and with all the consequent confusion, and the Association would simply attempt to store that and sell it as they could,

(Testimony of Roland Snodgrass.)

hoping for a break in the market, and as they began to perish in storage to try to work it over and salvage as much as they could of it. And it didn't work.

Q. Now, that resulted—I presume that resulted in a considerable loss when that stuff was delivered and couldn't be disposed of or couldn't be disposed of without constant working over when it began to spoil?

A. It resulted in losses in more than one way. In the first place, we poured a lot of bad labor into it in as much as we were unable to sell a great per cent of it which we had accepted, stored, graded, re-graded, re-stored and re-graded and ultimately had to throw out as a bad deal. And in some cases where it looked as though the market was favorable, I believe we made mistakes and paid on it too soon and ultimately it developed we were unable to sell it.

Q. Now, Mr. Snodgrass, assuming that a lot more lettuce or celery were delivered than what you were able to dispose of, these figures Mr. Grigsby quoted are the cost of goods sold—in other words, the cost paid to the farmer? A. That is right.

Q. As against the cost—against the retail price—the amount received from the consumer? Well, that figure as such doesn't bear any necessary relation at all to the amount of [299] produce that farmers delivered, does it, in a case where you had a lot of loss?

A. No, it doesn't. Well, yes, there is a sort of relationship, but there is no where near any exact relationship in there.

(Testimony of Roland Snodgrass.)

Q. Well, take our milk producers: Relatively all the milk they delivered was sold?

A. Yes, relatively all—a very high percentage of it.

Q. They would get a certain part of the consumer's dollar for all the milk they sold?

A. Well, they have—they have received what we have called an advance all the way through—they have received a high advance. You see, depending upon the amount you expect to be able to sell, the Association has followed a practice of making an advance which it considers safe. In other words, when we know from past performance that we will sell practically all the milk the advance can be raised up closer and closer to the maximum amount which can be paid for the item. When there appears to be a surplus, if the surplus isn't—well, isn't predictable as to how great it is, this advance is dropped on other commodities so that if—you try to be sufficiently conservative so you can't lose the advance by it—but you can also make some bad guesses because the confusion gets pretty thick there.

Q. The point I was trying to get across was this: A produce dealer might receive all of the consumer's dollar for the produce and still get a small percentage per item for the stuff he [300] delivered, if a lot of that stuff spoiled, mightn't he?

A. Yes. That is going back to this Article (7) of the marketing contract, which states that, I believe, the Association pays back to the farmer all the proceeds, less the (5) deductions, realized from

(Testimony of Roland Snodgrass.)

the sale, I think. If it should happen that you received, as we agree to receive, 10,000 cases of lettuce, which is a possibility—we have sold as many as 6,000 in a season—and yet we sold only 2,000 of those, then the farmer might receive—would receive payment, certainly, for only the amount received from the 2,000, less whatever labor the Association put in on the 10,000. This is the way it is supposed to work if one can do that. But you may have made an advance of, say, 40 per cent of the value of the lettuce come in and you will sell only 20 per cent of it, which means you lose your advance plus your labor if you make a bad guess, or if the season happens to work wrong.

Q. Now, supposing you receive this 10,000 crates of lettuce, and you sell only 2,000, and supposing the farmer gets back relatively all the money you receive for the 2,000 crates of lettuce, then he still would be receiving only a small amount per case on the lettuce he delivered, wouldn't he?

A. That is right.

Q. That is the point I am making. Now, so far as the milk men are concerned, they have consistently received 50 per cent or better of the consumer's dollar for the product they delivered, is that right?

A. That's right.

Q. According to your testimony yesterday?

A. That is correct. [301]

Q. Even without these dividends or bonuses or extra payment or whatever they may be called?

A. With the exception of 1940—they got around

(Testimony of Roland Snodgrass.)

44 or maybe perhaps as low as 40 per cent of the consumer's dollar. But from 1941 on, when the market was pretty well known and we did have a good market, the down payment—the initial advance, or whatever it is called, was approximately 50 per cent of the consumer's dollar.

Q. Can you break down for the Court the figures in such way that you can tell about what the farmer got for a quart of milk in 1945, on the advance or the first payment or whatever we call it?

A. Well, if that sheet is available showing the prices paid to the farmer for milk on the bimonthly basis.

Q. We have that here (getting an exhibit from the Clerk).

A. Instead of reading that in terms of dollars per hundred, read those figures in terms of cents per pound, which is the same thing. It is simply dividing through by a hundred. There are approximately  $2\frac{1}{6}$  pounds per quart of milk, so multiplying these figures by  $2\frac{1}{6}$  all the way through would give the price paid for milk. The most relevant figure all the way through is to use the one for four per cent milk. Did you want for 1945?

Q. I think that's best since that is the period we are talking about here. (Witness started to figure.) You are not writing on that sheet, are you?

A. I am afraid I am.

Q. I had better give you another piece of paper. Here is the same thing and you can write on this one.

A. Well, now, using [302] that basis on four per



(Testimony of Roland Snodgrass.)

cent milk the farmer would have received approximately, in the first part of 1944, 13.46—I beg your pardon, in the first part of '45 he would have received 13.46c per quart.

Mr. Grigsby: I didn't get your figure per quart?

The Witness: 13.46c. After the first of August, 1945, he would have received approximately 14½c per quart. After the first of September he would have received approximately 15.6c per quart. And after the 16th of September he would have received approximately 16.6c per quart.

Mr. Davis: All right. Now, that milk at that particular time was retailing in Anchorage for how much?

A. During all that time the prices for which it was retailing would be—and this includes the mark-up of the stores which were handling it—30c a pound to the civilian market—or 30c a quart to the civilian market; 26c a quart to the Army, which, during 1945—during the early part of 1945—were taking a large percentage of it; during the late part a smaller percentage. Usually in the winter time the Army arbitrarily took one-half of our milk, and perhaps 10 per cent of that milk was selling in Palmer at 20c—well, no, part of it was sold in gallons at 20c per quart, and part of it was sold over the retail counter at 25c a quart. So it had four prices: 20c in gallons at Palmer; 25c, whatever was sold retail at Palmer in the two stores there; 26c a quart to the Army, and 30c a quart to the civilian trade in Anchorage. [303]

(Testimony of Roland Snodgrass.)

Q. Now, Mr. Snodgrass, just trace what happens to that milk after it comes into the creamery. What do you do to it?

A. Well, when it first comes into the creamery, it is dumped into a weighing vat and each farmer's milk is weighed separately and the weight is recorded on a slip on the wall which is kept there for 15 days and then replaced with another one. It is left there at all times and everyone can go in and look at it. In fact, they could change it, except nobody has yet. While it is in the weighing vat, or as it is dumped from the weighing vat into the pump vat, sample is taken for testing. This sample is kept and tested with other samples of the same man's milk periodically to get his average composite butterfat test for the bimonthly payments. Then it is pumped into a holding tank until enough has been put in there to pay to start loading the milk truck, and as the milk is dumped it is then put into the milk truck, with the exception of the amount held out for Palmer. And then, from the standpoint of standardizing, since it is desirable—or is customary now—to put a uniform percentage of butterfat in the milk each day, a certain amount is kept out depending upon the test, and it is separated. In the summer when the milk test is low the cream is put back in with the milk in order to raise the test from the average we receive to the average we are marketing; and in the winter time the skim milk is put back in to lower the average from what we are receiving to what we are market-

(Testimony of Roland Snodgrass.)

ing. So we have a uniform test all year round. Then the milk is hauled to Anchorage. [304]

Q. What is that truck? How does that truck operate?

A. Well, the truck, of course, is a 1200-gallon stainless steel thermos bottle.

Q. Glass lined?

A. No, it is stainless steel tank throughout, insulated with cork and with metal on the outside. It is hauled down to Anchorage, pumped into the pasteurizers and it is cooled there inasmuch as there is sufficient time before any bacterial growth starts to permit its being handled that far without cooling. Of course, it had been cooled before it comes in and any warming up that it does is taken back out of it by cooling in the pasteurizer, simply by circulating the milk in a vat through which cold water is running in the jacket. Then it is held overnight. It is unloaded here about three or four in the afternoon; it is held over night and pasteurized very early the next morning and put on to the market. After it leaves the pasteurizer it runs over a cooler, which drops the temperature from 143 degrees down to 50 degrees, then it runs through the bottling machine, which puts it in the bottles and caps it. Then it goes in the cooler just until such time as the delivery trucks, or the buyers' trucks come and take it out.

Q. Now, the milk that is going to be sold retail is sold by a driver with a milk wagon, isn't it—milk truck distributes it around town?

A. It is at the present time. Some may also be

(Testimony of Roland Snodgrass.)

sold by stores. In 1945 there was no retail route so it all was sold through stores in different parts of town to which the [305] drivers either made their delivery or the stores sent their trucks for it.

Q. Then the stores pay you a certain price for that milk and make their mark-up and then the retail price has been this 30c?

A. The stores paid us 25c and their retail price was 30c, so we didn't receive that additional nickel in there except, of course, on the small percentage that was made by retail customers dropping in at the dairy and buying milk there. But that is a small percentage. That really is just in proportion to the number of stores that were selling milk.

Q. Now, how about the Army? How was that handled?

A. The Army milk, of course, was all bottled in half pints. The Army insisted on that and it was quite a nuisance, but the Army milk was bottled in half pints and the Army brought a truck there to the plant and picked it up and returned the bottles each day they came in with the truck. There was one significant difference was that on the milk sold up town there was a bottle deposit to guarantee the return of the bottle, whereas the Army did not have such bottle deposit, so the Association had to stand all the breakage on their bottles whereas up town if you took a bottle out and broke it you forfeited the deposit.

Q. Then, between the time that you bought this

(Testimony of Roland Snodgrass.)

milk for 13 to 16c per quart, as you have testified, you actually sold all of that milk for 25c or less, didn't you?

A. 25c or less with the exception of the small amount sold in bottles at the dairy. [306]

Q. But the consumer paid 30c, 26c, 25c, and 20, according to the schedule you mentioned?

A. That is correct.

Mr. Davis: Thank you, Mr. Snodgrass. That is all.

#### Redirect Examination

By Mr. Grigsby:

Q. Did the Army come to Palmer for the milk?

A. No, the Army picked up their milk at the pasteurizing plant in Anchorage.

Q. Now, what you mean there, where you illustrate that the co-op lost money on some hogs they sold to the Army, is that in proportion to the amount of the transaction, the indirect overhead—

A. Shifted.

Q. The indirect overhead was so much and the profit so small that you lost money? In other words, you didn't charge enough?

A. Well, if you will notice the transaction itself, we made money on the thing as we knew we must.

Q. Well, how did you make money when you failed to take into account the indirect overhead?

A. Well, we have to take on lots of operations in order to ever make a profit—a lot of operations which make up just \$1.00 over costs—in order to

(Testimony of Roland Snodgrass.)

spread that indirect overhead and to reduce it on each dollar sale. If you will notice just the pork pool you will see that we did make \$40,000 over all the costs and over the increase in indirect overhead.

Q. Yes, but you didn't charge enough or you would have had enough to pay the proper share of indirect overhead?

A. All right, [307] now, we couldn't get any more out of the customer.

Q. Then you would have been better off not to go in the deal?

A. Then we would have been over there in the left hand column, without the pork, and you will notice that the cost of handling that milk in the top column is 40%, and the bottom column, without changing the operation except as to the pork, has dropped to 30½.

Q. As a matter of fact, you bought a lot of those hogs from others than co-op members?

A. Yes, indeed.

Q. And you paid them so much?

A. That is right, Seattle plus freight.

Q. Now, you figured out what you paid for it, and what the handling, operations expenses of that unit were, and you knew that they had to pay a proportionate share of the indirect overhead?

A. That's right.

Q. And it would amount to something?

A. Yes.

Q. And your operation resulted in loss?

(Testimony of Roland Snodgrass.)

A. For that department, but a profit for the Association, which appears over in the Dairy Department for that particular thing.

Q. How does it amount to a profit for the Association if you lost money on the transaction? The Association lost money on the transaction, didn't they?

A. No, sir, the Association made \$40,000 on that particular transaction.

Q. Well, if the Association made \$40,000 on that particular transaction, what is the materiality of all this? The Association [308] made money, then on the grocery store, too, didn't it, except for the indirect overhead?

A. Yes, that's right.

Q. In the same manner? Is that a proper comparison? Now, the grocery department in '45 lost \$20,000, didn't it?

A. No, I don't think so.

Q. Well, was it the garage?

A. The garage, yes.

Q. Lost \$20,000?

A. Oh, Mr. Grigsby, I admit there is a lot of inefficiency in this whole operation—losses that shouldn't have occurred. But there is this one thing: The shifting of one losing department may have created a much higher profit in another. It is simply a fluid thing about the books—

Q. Well, all right. You are taking an arbitrary figure and setting each department's share of the indirect overhead. Now, what are you trying to contend here when you charge the dairymen 27.40

(Testimony of Roland Snodgrass.)

per cent of the indirect overhead—that you didn't charge them enough?      A. No.

Q. What is the point of all this, then? Now, your books show that in '45, on the proportion of the amount of business done, that the dairymen—the dairy-creamery—paid 27.40 per cent of your indirect overhead, didn't they?

A. Well then, it must have had that same percentage of the sales.

Q. Well, that's the figures, aren't they?

A. I don't know, but if you read them out of there I will agree to them.

Q. All right, Fiscal Year ending November 30, 1945: Dairy-creamery, operating profit before indirect overhead, \$98,915.14. [309] Now, the indirect overhead consisting of Power House, Cabinet Shop and General and Administrative, is \$128,653. Dairy-creamery indirect overhead per cent, 27.40 per cent. In figures, the dairy-creamery is charged with \$12,220 for the power house, \$9,521 for the cabinet shop, and something for G&A, which makes a total of about \$45,000. If you will look at Page 19, can you state that the dairy-creamery was charged 27.50 per cent of the indirect overhead?

A. Well, I had thought it was higher. I thought it was 30 per cent.

The Court: Is that the 1945 audit?

Mr. Grigsby: Yes.

Mr. Davis: I think—

The Witness: Yes, 33½ per cent.



(Testimony of Roland Snodgrass.)

Mr. Grigsby: Then they are charged more. What is the 27.40, then?

A. Well, it states that it is operating profit before the indirect overhead. Now, actually, the figure you are shooting at is 33, I believe, Mr. Grigsby.

Q. Well, anyhow, the amount of indirect overhead charged to the dairy-creamery for '45, according to the statement that is in evidence here, is \$45,-121.31? A. Uh-huh.

Q. So that would really be approximately 33 per cent of \$128,653?

A. Uh-huh, because it had approximately 33 per cent of the total sales.

Q. Yes, and it is based on that?

A. That's right.

Q. Now, do you figure you didn't charge them enough? [310]

A. No, I figure this way: If we had by any means increased the total sales, that we would reduce the percentage which the creamery would have to stand and reduce the dollars which the creamery would have to stand.

Q. Do you mean as to the total sales of the Grocery Department?

A. Yes, if we reduced that we would reduce the overhead charge to the creamery.

Q. Now, in 1945 you made a certain amount of gross sales in the Grocery Department?

A. Yes.

Q. And you lost money?

(Testimony of Roland Snodgrass.)

A. Not until after the distribution of General and Administrative.

Q. Well, all right. You have got a right to charge them with some of the indirect overhead?

A. That's correct.

Q. And after you did charge it you lost money?

A. In the department.

Q. Yes? A. Uh-huh.

Q. Now, if you would have had a greater volume could you have made money? A. Yes.

Q. Even at the same prices?

A. Yes, we could.

Q. Now, you spoke this morning of marking up ten percent above cost price. You don't mean actually that you ever did that?

A. Well, I will give you an example over there in which we marked up five per cent above costs.

Q. Yes, but that is a pork transaction. Now, you never bought groceries outside and then marked up and sold them for ten [311] per cent plus the cost? You never heard of a grocery store running that way, did you?

A. Well, I won't say that we had done that. We mark them up a certain amount and then on some trade discount—for instance, if we sold to another store or a restaurant or some business in trade—we would give a ten per cent discount, which might amount to the same thing, but——

Q. Well, as a matter of fact, didn't you add on from 27 to 50 per cent to the cost price, same as

(Testimony of Roland Snodgrass.)

every other grocery store does—or perhaps more?

A. No, I don't think we did.

Q. Did you ever hear of a grocery store operating on the basis of an increase of ten per cent on the cost of the goods?

A. Well, you understand in figuring our mark-ups at that time—it was already done for us. In 1945 OPA was still effective and they had frozen the mark-up on what it had been when they originated. In other words, if we sold a thing—bought it for \$2.00 and sold it for \$2.50—the OPA allowed us—that is, if we had done that, say, in 1942—we made 50c on the item. Now, if in 1945 the item now cost us \$4.00, we had to sell it for \$4.50.

Q. Well, anyway, you say that if you could have increased your volume to a sufficient extent, that you could have made a profit in spite of your sharing of the indirect overhead?

A. Yes, we could so long as the mark-up was sufficient so that the actual cost of the transaction was less than the selling price.

Q. Well, all right. Now, in 1945 if you could have sold [312] more goods even at the price you did sell it, and enough more goods, it wouldn't have meant a loss, would it?

A. That is true on every department which shows this: That there was still a profit before the distribution of General and Administrative expense.

Q. Is that true of the Grocery Department?

A. I believe it is, but I should look at the audit to say so.

(Testimony of Roland Snodgrass.)

Q. What I am getting at, the more goods you sold in that Grocery Department the more money you made, even at the figure you sold it?

A. So long as it shows on that sheet there a profit before the General and Administrative.

Q. Well, all right. The other day you had a witness on the stand that said that the dairy farmers are responsible for six per cent of the loss of the grocery store in proportion to the amount of trade that they gave it.

A. Well, I don't doubt that.

Q. Well, if they deducted from their trade with you, they are responsible for that much more of your loss? If they didn't trade with you at all, you couldn't charge them with any of it—is that the theory?

A. I don't know the theory. I didn't set it.

Q. You heard the testimony here. Mr. Davis has Mr. Allyn on the stand and he proved by Mr. Allyn, the dairy farmers were responsible for a certain amount of the garage loss in proportion to the amount of patronage they gave the garage. They are responsible for a certain amount of meat loss in proportion to their patronage; and the grocery store, in proportion to the [313] patronage. Yet you say as the volume of business increases the loss is greater.

A. That is correct, with that one——

Q. Then they shouldn't be charged?

A. No, I believe they probably should be paid for it.

(Testimony of Roland Snodgrass.)

Q. So, so far as you are concerned you abandon the theory of an offset on our claim here on account of buying goods?

A. I didn't even advance the theory. That is Mr. Davis' theory.

Q. As a matter of fact, every member of this Association contracts to buy all his stuff where you got it at your stores, doesn't he?

A. I believe so, yes.

Q. And he goes there and he pays what you ask him for it?           A. Yes.

Q. Now, I want to ask you this, Mr. Snodgrass: I should have asked you this morning: Of course, for 1945 you didn't make any additional payments, and used the \$57,000 for cooperative purposes of one kind or another. You stated that that \$18,800, approximately, that you had left over after making the additional payments for '44, you used to plug up different holes where you had a loss in the department. It was applied to that—that is in the books, is that right?

A. Well, I will put it this way: In effect, that is what happens to it.

Q. All right. In effect, that is what happens. Now, in 1945, for instance, here is the figure showing the dairy-creamery made a net profit of \$57,001.58, and the Produce Department made a loss of \$20,319.12. So you took this \$57,000 and used part of [314] it to plug up that hole that was left by the loss in the Produce Department?

(Testimony of Roland Snodgrass.)

A. Shall we say, in effect, that is what has happened to it?

Q. Now, you paid the Produce Department \$76,976.05 for the produce they sold you in 1945, and for that produce you received \$101,697.97. So, you paid the Produce Department about 75 per cent of what you got for their goods? A. Uh-huh.

Q. Didn't you?

A. If that is what the figures show, I will admit it.

Q. (Handing paper to witness:) 101,000 is what you got for the goods; 76,976—

A. I think that is correct.

Q. Now, with relation to the milk and dairy products, you received for the goods \$361,145.56, and paid for the goods \$178,422.88, which is a little less than half? A. I think that is about right.

Q. Well, that is what comes under the head of "advances." As a matter of fact, they never advanced the dairymen anything, did they? You just described how they bring their milk down there and deliver it to you, and you measure it, is that right?

A. We paid for it at a certain rate.

Q. Just a minute—let me ask the question: They bring their milk down there and deliver it to you at Palmer? A. That is right.

Q. Or you go get it and take it down. Anyway, it is delivered to you at Palmer, isn't it, and weighed? A. That is right.

(Testimony of Roland Snodgrass.)

Q. Then you pay them every two weeks?

A. That's right.

Q. For instance, if I brought milk there today I wouldn't get paid for it for two weeks?

A. That is correct.

Q. And that is after you sold it?

A. Yes, but it is probably on charge account, most of it, not paid until the end of the month.

Q. But you have sold it?

A. All right, we have sold it.

Q. Now, you haven't made them any advance, have you?

A. That is just a matter of terminology. In one way it is and in one way it isn't.

Q. Now, you have a right under this contract to charge them interest on advances?

A. I believe it is in there.

Q. Under this contract, under Paragraph (4):

“The Association agrees that upon delivery of agricultural products hereunder it may make or cause to be made through its Management and Sales Agency such requested advances to the Producer on said products as in its discretion may be justified by the Producer's immediate needs and by marketing conditions.”

A. Uh-huh.

Q. So, a man delivers milk on the first of the month; you don't pay him for it for two weeks; and it is sold by that time, isn't it? You know at least what you are getting for it by that time, don't you—whether it is on a charge account or not?

(Testimony of Roland Snodgrass.)

A. You know what it is billed out at.

Q. What's that?

A. You know what it's sold for, subject to collection. [316]

Q. You know what you are getting for that milk, so you are safe in giving him an advance of 40 per cent or 50 per cent?

A. You are safe about to that point.

Q. But now when a farmer brings in potatoes, you don't know just when you are going to market them, do you?

A. That's right.

Q. And you don't know whether they are going to spoil?

A. You don't know how many are going to spoil.

Q. Or whether you will have an over-supply?

A. That is right.

Q. So, you use your judgment in your advance to the farmer?

A. That's right.

Q. And in '45 you used your judgment and advanced them 75 per cent. That's true, isn't it?—The figures I just showed you?

A. Yes, I believe you can say that is true.

Q. And it cost you—you received 101,000 for his product, which was much less than you expected to receive, of course, wasn't it?

A. I think that is right.

Q. If you had known you weren't going to get but 101,000 for all that stuff—you paid \$76,000—you wouldn't have advanced that amount, would you?



(Testimony of Roland Snodgrass.)

A. That's right.

Q. But you charged him with \$4,000, approximately, of indirect overhead, didn't you?

A. With whatever figure is shown there. Well, if it is there I will agree to it.

Q. You charged the farmer—the produce farmer—\$4,995.62 of indirect overhead.

A. All right. [317]

Q. You charged him \$40,045.42 operating expense? A. Uh-huh.

Q. And that left you in the hole on that deal of \$20,319.12. A. I think so.

Q. And that could have been because you couldn't find a fair market for the potatoes, or—but the fact is you advanced him too much money which you wouldn't have advanced him if you could have looked forward to what happened?

A. I think that is right.

Q. So, it left you in the hole on your deal with the farmers \$20,319.12?

A. I think that is correct.

Q. And you took this \$57,000 the dairy made and plugged up the hole?

A. That is what happened, as I said.

Q. That is just exactly what happened in this transaction, and then you didn't have it left to pay the dairymen with? A. I think that's right.

Mr. Grigsby: That's all.

(Testimony of Roland Snodgrass.)

Recross Examination

By Mr. Davis:

Q. Now, I will repeat the question I asked you awhile ago, since Mr. Grigsby brought it out: When we are talking here about the produce dealers, you are talking about the goods that were sold to the public, is that right?      A. Produce dealers?

Q. Yes—I mean your produce, in your Produce Department: When we are talking about gross sales price, that's the gross sales price of the produce that was sold, isn't it?

A. Yes.

Q. When you are talking about the gross sales price of the [318] milk that is the amount received from the ultimate consumer?

A. Yes. These are both total sales or the average sales price. There can be two things there.

Q. All right, now: The milk dealer—the milk producer—let me withdraw that. Relatively all, if not all, of the milk was sold to the ultimate consumer?      A. That is right.

Q. That isn't necessarily true of the produce?

A. It wasn't in that year at all.

Q. Considerable of that produce never went to the ultimate consumer at all?      A. That's right.

Q. So that the effect was that the milk farmer, per unit, received a good deal more for his product than he had sold than the producer-farmer received per unit for the produce that he sold?

A. Yes. I could give you ranges which would be somewhat estimates, but I could find places where

(Testimony of Roland Snodgrass.)

these have happened: The produce farmers in some commodities may have got only 20 per cent of what his commodity was selling for due to—oh, surplus. That is, we might buy a thousand pounds at 20c a pound, if it were radishes, and sell only 300 pounds at 30c. Such a thing as that could happen. Or we could sell—we could buy 10,000 pounds at 20c and sell 300 pounds at 30c a pound. In other words, the radish men might have got 75 per cent, or he might have got only 15 or 20 per cent of the selling price of his commodity, depending on whether or not there was a surplus.

Q. Now, assuming, as Mr. Grigsby has had you testify here, [319], that the produce dealer in 1945 did receive 75 per cent of the amount the consumer paid, that doesn't mean necessarily that he received more money for the product he sold per unit than what the dairymen did, does it?

A. No, that doesn't.

The Court: You mean the product he sold, Mr. Davis, or his product that was ultimately sold?

Mr. Davis: No, I am talking about the product he sold to the co-op. In other words, when we have a surplus, then there occurs a loss. The produce farmer might get all of the consumer's dollar and still get a very small amount per unit for the produce he sold to the co-op. Whereas the milk producer all the way through here has been receiving 50 per cent or better of the consumer's dollar, and the consumer's dollar in that case is also the same figure as the amount he sold to the co-op.

(Testimony of Roland Snodgrass.)

The Court: May I ask a question there? Did you on any, or many, occasions receive produce, such as cabbages and radishes and so on, from the producers, for which you made no payment at all?

The Witness: There would not be many occasions like that.

The Court: The total amount would be insignificant?

The Witness: Yes, because of the fact that although we might have received \$10,000 worth of cabbage and sold only \$1,000 worth of cabbage, we would feel that whether they threw the last batch of cabbage to come in away or not, that he is entitled to approximately the same amount as the other producers. [320]

The Court: Very well. You may go ahead.

Mr. Davis: Now, to carry that one step farther: Supposing that a man sold 10,000 pounds of cabbage. Supposing you say you sold 1000 pounds of cabbage. Now, supposing the farmers got all the money that the consumer paid for that cabbage, they still are getting paid for 10,000 pounds of cabbage on a basis of 1000 pounds, aren't they?

A. Yes, that as an illustration is what happens.

Q. Where your milk producer, where all the milk is sold, is always getting paid for a hundred pounds of milk—when a hundred pounds of milk is sold to the co-op he receives pay for a hundred pounds of milk? A. That is correct.

Mr. Davis: I think that illustrates the point I was trying to get at awhile ago.

(Testimony of Roland Snodgrass.)

The Court: That is all.

Mr. Grigsby: Just a minute.

Redirect Examination

By Mr. Grigsby:

Q. In 1944 the sales of the Produce Department were \$268,806.78? A. That is right.

Q. Two and a half times as much as in 1945?

A. I think that is about correct.

Q. That year it paid better to be produce farmer than it did in '45, didn't it?

A. Oh yes, decidedly.

Q. Now, as a matter of fact, the produce farmers didn't [321] make any money in '45, did they, themselves?

A. Well, I couldn't say about that. Some, perhaps, did; some perhaps didn't.

Q. Well, very little, didn't they?

A. Well, it is quite a question. If you use the collective farmers or individuals, some did or some didn't. As a whole they didn't make as much.

Q. And as a whole the co-op lost money on it?

A. That is obvious.

Q. The dairy farmers did make money, in '45?

A. Yes, they did.

Q. And the co-op made money on it?

A. That's right.

Mr. Grigsby: Can we take the afternoon recess at this time?

The Court: Court will stand recess until 2:50.

(Testimony of Roland Snodgrass.)

(Whereupon recess was had at 2:40 o'clock p.m.)

After Recess

The Court: Are both parties through with Mr. Snodgrass?

Mr. Grigsby: One more question from Mr. Snodgrass.

The Court: Will you take the stand again, Mr. Snodgrass?

(Witness resumed the stand.)

Mr. Grigsby: Referring back to that 18,800 and some odd dollars that was held out, or remained from the net profits of the creamery and dairy for the 1944 production, after paying additional payments of 20 per cent and 21.125, was there any agreement made with the dairy farmers that that amount should be held out, or was nothing said about it?

A. I believe that there was nothing said about it. [322]

Q. They seemed to be satisfied? That's all.

A. Well, it's altogether in a sort of negative sense. They have raised no objection and they always come in at the audit and see the figure is there. So it shows—

Q. They have the legal privilege of coming in and seeing it?

A. That's right.

Mr. Grigsby: That is all.

(Testimony of Roland Snodgrass.)

Recross Examination

By Mr. Davis:

Q. Mr. Snodgrass, outside of the marketing agreement was there ever any agreement with any of the milk producers as to how the proceeds were to be distributed—outside of the marketing agreement itself?

A. There is no formal agreement. There have been enough discussions to say that there are perhaps a dozen different understandings, but there is only the one formal agreement.

Mr. Davis: That's all.

The Court: Wait just a minute. Before Mr. Snodgrass leaves the stand, I think it would be well to have Mr. Snodgrass put on a sheet of paper what appears on the blackboard here, and for purposes of illustration only it will be admitted in evidence as Defendant's Exhibit No. 5.

DEFENDANT'S EXHIBIT NO. 5

Illustration of a Principle Operative in the Books of the Association

	P & L, Creamery & Dairy	P & L, Meat Dept. (Pool)	
Total sales .....	\$1,000,000	\$1,000,000	
Cost of goods .....	600,000	700,000	
Gross profit .....	400,000	300,000	
Operating expense .....	200,000	250,000	
Net profit before G & A .....	200,000	50,000	(Increase
G & A expense .....	200,000	10,000	(due to
Profit or loss .....	.....	40,000	(transac- tion.)

(Testimony of Roland Snodgrass.)

## Co-Op P &amp; L as Per Audit

Total sales .....	\$2,000,000
Cost of goods .....	1,300,000
	<hr/>
Gross profit .....	700,000
Operating expense .....	450,000
	<hr/>
Net profit before G & A .....	250,000
G & A expense .....	210,000
	<hr/>
Profit or loss .....	40,000

## Breakdown of Audit to Departmental P &amp; L's

	P & L, Creamery & Dairy	P & L, Meat Dept. (Pool)
Total sales .....	\$1,000,000	\$1,000,000
Cost of goods .....	600,000	700,000
	<hr/>	<hr/>
Gross profit .....	400,000	300,000
Operating expenses .....	200,000	250,000
	<hr/>	<hr/>
Net profit before G & A .....	200,000	50,000
G & A .....	105,000	105,000
	<hr/>	<hr/>
Profit or (loss) .....	95,000	(55,000) Loss

[Endorsed]: Filed August 5, 1948.

Mr. Davis: I think this is the same, Mr. Snodgrass, that you worked out previously.

A. Yes, except that it doesn't have titles. I will be glad to do this. [323]

The Court: You can do it after you leave the witness stand. Just put down on a sheet of paper whatever appears on the blackboard, and then it will go in the record if an appeal is taken in the case. Otherwise the whole thing is lost.

The Witness: Yes. May I point out that the \$10,000—the sixth figure down on the right hand



(Testimony of Roland Snodgrass.)

side—is the increase in the G&A expense due to this particular transaction.

The Court: You so testified. I do not know whether it appears on the blackboard or not. You can write in your sheet of paper that this is the increase of G&A expense on account of that transaction so as to identify it. That is all, Mr. Snodgrass. Another witness may be called.

Mr. Grigsby: Mr. Huntley.

### WALTER E. HUNTLEY

being first duly sworn, testified for and in behalf of the plaintiff as follows:

#### Direct Examination

By Mr. Grigsby:

Q. State your full name?

A. Walter E. Huntley.

Q. You are one of the claimants involved in this law suit?

A. I am.

Q. When did you start selling milk to the co-op defendant corporation?

A. I am not sure of the exact date, but it was about four or five years ago.

Q. And I will ask you—I don't think you were here during [324] the trial—did you sell your milk and receive a current payment every two weeks during the time you sold it?

A. That is right.

(Testimony of Walter E. Huntley.)

Q. And the following year after the audit would you receive additional payments?

A. Sometimes one; sometimes two payments.

Q. Do you know what's the first year you got those additional payments?

A. I don't remember.

Q. Have you any vouchers for them?

A. I have two vouchers, yes.

Q. Do you know for what year this voucher was?

A. I am not sure—either '43 or '44.

Q. Well, is one of them for '43 and one for '44?

A. I don't know for sure.

Q. You don't know? These are all the vouchers you have been able to find, are they?

A. That's all that I have found, yes.

Mr. Grigsby: We offer these in evidence as one exhibit, Mr. Davis. (Handing them to Mr. Davis.)

Mr. Davis: That is about No. 14, your Honor?

Mr. Grigsby: 15, I guess.

The Court: 17. They may be admitted and appropriately marked as Plaintiff's Exhibit No. 17.

(Plaintiff's Exhibit No. 17 admitted in evidence.)

(Testimony of Walter E. Huntley.)

PLAINTIFF'S EXHIBIT NO. 17

Remittance Advice—No Receipt Required  
Matanuska Valley Farmers Cooperating Association

Date of Invoice	Description	Gross Amt.	Discount or Deduction	Net Amt.
	Second milk pool advance			
	Total amount purchased	\$3260.89		
	20% of dollar value purchased	\$652.18		
	Less 2% statutory reserve	13.04		
	Amount of second advance			\$639.14
*	*	*	*	*
	Final payment—milk and cream pool			
	Total amount purchased	\$3260.89		
	22.579% of dollar value purchased	\$736.28		
	Less 2% statutory reserve	14.73		
	Final payment			\$721.55

[Endorsed]: Filed August 5, 1948.

Mr. Grigsby: Now, Mr. Huntley, do you recall that in 1945 [325] you received a payment of 20 per cent on what you had already been paid, followed by another payment of 21.125?

A. What year was that?

Q. In 1945, for the production of 1944?

A. I do recall that, sir.

Q. Now, you have heard it testified to here today—a reference made, anyway—to some \$18,000 odd retained by the co-op out of the net profits of '44 after making those additional payments? Did you hear that testimony? A. I did.

Q. Did you know—when did you first know that they retained that? A. Today.

Q. When you were paid off in '45—your final

(Testimony of Walter E. Huntley.)

payment on what was called the milk pool of '44— did you assume, or did you know there was anything left of the net profits of the creamery-dairy?

A. I did not.

Q. What was your idea as to what had become of all the net profits?

A. I thought that all the net profits were being paid to the producers.

Q. And why did you think that?

A. It never occurred to me to question it.

Q. You mean you had confidence in their—

A. I did. I thought we were a group of honest individuals and that everything was above board.

Q. Was it your understanding that time that you were entitled to all the net profits of that particular unit?

A. It has always [326] been my understanding that the members of the co-op were entitled to all the net profits.

Q. Of the sale of their particular product, you mean?      A. That's right.

Mr. Grigsby: You can take the witness.

#### Cross-Examination

By Mr. Davis:

Q. Just two questions, Mr. Huntley: You are not farming any more, are you?

A. Yes, we have a farm left.

Q. Are you a member of the Matanuska Valley Farmers Co-op now?      That's right, I am.

(Testimony of Walter E. Huntley.)

Q. And you were also such member at the time that you sold your milk in 1945?

A. That's right.

Q. You at one time, I believe, were a member of the Board of Directors?           A. That's right.

Q. What year was that?           A. 1938 and '39.

Q. Prior to the time that we have any reference to here?           That's right.

Mr. Davis: That is all, Mr. Huntley.

Redirect Examination

By Mr. Grigsby:

Q. One other question, Mr. Huntley: Were you present at a meeting of the dairymen that were involved in this, or some of them—involvement in this law suit—and some members of the Board of Directors of the co-op discussing this situation last [327] spring about the first of April?

A. I was not.

Q. You were not? That's all.

The Court: That is all, Mr. Huntley. Another witness may be called.

Mr. Grigsby: Mr. Allyn.

## MARVIN ALLYN

heretofore duly sworn, resumed the stand and further testified as follows:

## Direct Examination

By Mr. Grigsby:

Q. Mr. Allyn, did you get the figures of the amount, under this item of cost of goods sold in 1945, creamery and dairy, of approximately \$178,000—did you get the amount of eggs you purchased?

A. I am sorry, I didn't get that. When the claimants came in on Saturday we looked up a figure which I, in their presence, took to be the previous accountant's figure. Now, when we compared it with our others we find that that was subject to some adjustment and this morning, looking up these other figures you asked for—I am sorry, but I was not able to trace that back and correct that figure.

Q. Do you know approximately what you paid for eggs in '45?

A. I don't. The figure which I gave them is obviously subject to adjustment.

Q. And have you been able to—in the time you have had—to get the breakdown of this approximately \$42,000 that you paid [328] for goods outside of milk?

A. If you recall, I spoke to you after the last meeting, explaining that my reasons—which I had pointed out to the Court—and you told me that

(Testimony of Marvin Allyn.)

unless I heard for you that it wouldn't be necessary.

Q. Well, you did hear from me, didn't you?

A. On Saturday. I believe it was Saturday.

Q. Well, anyhow, you haven't got it?

A. No.

Q. You haven't attempted to show where that extra \$42,000 went?           A. No.

Q. Have you at this time any way, from any information you received down there—other than an approximate guess—of showing what the creamery made in '45, in profit?

A. What the creamery made? From the audit I made a separation on the basis of the settlement in 1944.

Q. By the settlement in '44, you mean the result whereby the co-op held out some \$18,000 of the net profits of the creamery-dairy? Is that what you call a settlement?

A. No, the separation—the mechanics of a separation—as between dairy and creamery within that department.

Q. Well, was there—was that worked out? Was there a separation? Did you, or was it figured out for the year 1944, what the creamery made in '44, without anything from which to figure it out?

A. They developed a work sheet, and calculated back from the audit, and split this department and then as best they could they separated the department into creamery-dairy to [329] get back to the earning on the bottled milk.

(Testimony of Marvin Allyn.)

Q. Well now, can you state today that any figure, positively, is a profit made by the creamery branch of the creamery-dairy in 1945? For instance, assuming they sold a lot of ice cream mix to the Army out here? A. Yes, I can—

Q. Do you know what they made on that ice cream mix? A. Not on the ice cream mix.

Mr. Davis: You can get your figures, if you want to, Mr. Allyn.

Mr. Grigsby: All right, get the figures.

(Witness left the stand briefly.)

The Witness: You asked for the creamery?

Mr. Grigsby: The ice cream mix.

A. No, I have no profit on ice cream mix.

Q. Have you anything there showing any profit on eggs? A. No.

Q. Ice cream? A. No. Those are these manufactured products which, of necessity, had to be lumped together.

Q. Then you can't state that they made any profit in 1945 on the creamery?

A. Then on the bottled milk either. Collectively we did.

Q. But you know what you paid for the milk to the farmers and what you sold it for?

A. That's correct.

Q. It has been testified here that in a certain period in 1945 they paid the farmer 13c a quart for it; another period 14c a quart; another period 15c a quart; another period 16c a [330] quart, and that



(Testimony of Marvin Allyn.)

they received from 20c in Palmer, 26 from the Fort, up to 30—that is the consumer price. So you got those figures?      A. That's right.

Q. And you know there was a profit on bottled milk, don't you? Must have been according to those figures? You have got the cost of handling here set down in your books?      A. That's right.

Q. And the indirect overhead? So you know that they made a profit on bottled milk, don't you?

A. Yes.

Q. You don't know that they made a profit on the creamery products?

A. In the same way that we know that we had an earning on bottled milk. You can't question one without questioning the other.

Q. Well, you haven't got the figures here on what you paid for powdered milk, have you?

A. Not by specific products.

Q. What?

A. By subtraction we know how much we paid for all the purchases and supplies in manufacturing.

Q. Yes, you know that you paid \$42,000?

A. That's right.

Q. Do you know what you paid for powdered milk?      A. No.

Q. Do you know what you paid for butter?

A. No.

Q. For eggs?

A. No. The figure on eggs, being a purchase from the farmers, is available.

(Testimony of Marvin Allyn.)

Q. Well, how soon can you get it? Tomorrow morning? A. I can try.

Q. Well, can you get any of the other figures?

A. If we are rather late getting in there—rather late tonight—it will [331] mean looking up tonight—

Q. Well, all right, if you don't want to look it up, that's all.

A. For the Court's benefit I would like to explain that the clerks who are familiar with these old records will not be there, having gone home at five o'clock tonight. Some of these records are in the archives with which I am not familiar.

The Court: Mr. Allyn, is there any record from which you can readily ascertain the amount of milk which was used in the creamery in 1945 as distinguished from the amount sold in bottles or otherwise?

The Witness: That can be estimated by, I believe, perhaps, with the working of Mr. Snodgrass—if we can find a figure for it—a volume figure for ice cream made—by working back the formula we can get an estimate.

The Court: In other words, you know how much ice cream was made and you can say so many pounds of milk—?

The Witness: If that quantity of ice cream sales is available, we know our formula and we could work that back and get an estimated figure.

The Court: So far as you know, there is no readily available figure which will tell how many

(Testimony of Marvin Allyn.)

quarts or pounds or gallons or tons of milk were used in the creamery in the making of ice cream and other products in 1945?

The Witness: Not to my knowledge, sir.

Cross Examination [332]

By Mr. Davis:

Q. As a point of beginning, Mr. Allyn, all of Grade B milk was supposed to have gone in manufactured products? A. That is correct.

Q. And you could determine the amount of Grade B milk that was purchased in 1945?

A. That is correct.

Q. How much Grade A milk went into manufactured products and how much bottled you don't know and there is no way of finding out?

A. That's right.

Q. Now, you told Mr. Grigsby you couldn't determine as of now the amount that was paid for ice cream mix, or for eggs, or for these other items. Can you tell him the amount that the aggregate of them amounted to? A. \$45,231.72.

Q. Now, when the manufactured products are sold through the dairy here in town, if they are sold for cash they are all mixed up with cash sales of bottled milk? A. That is correct.

Q. So it is impossible to tell from the cash sales how much of the cash sales amounted to ice cream and how much amounted to milk, for instance?

A. That is correct.

(Testimony of Marvin Allyn.)

Q. But by taking the charge sales, can you establish a trend, to show how much—about what percentages of sales to the public were ice cream and manufactured products and how much were bottled milk? A. Yes I have that.

Q. Can you give us the proportion of manufactured products to bottled milk on those charge sales? A. On the charge sales? [333]

Q. Yes. We can't find it, now, on the cash sales?

A. The cash sales on the basis of the charge sales?

Q. All right, the cash sales on the basis of the charge sales?

A. We estimate that 78 per cent of the cash sales were for bottled milk and 22 per cent for manufactured products.

Q. Now, from what you have seen of these figures, going over these figures, do you have any reason to believe that the creamery—try and distinguish it, now, from the dairy—that the creamery lost money and the dairy made it, or the other way around? Or is it your conclusion they both made money?

A. It is my conclusion they shared in the net earnings of the department; that of the net income of \$57,000 that the creamery—the manufactured products—accounted for \$33,113.98, and that the bottled milk accounted for \$23,887.60. That is, I repeat, following the mechanics the way the separation was made by the previous accountant in 1944 and which was accepted.

(Testimony of Marvin Allyn.)

Q. That is the same thing you testified to two or three weeks ago? A. Correct.

Q. That by using the same formula and by applying to it the 1945 figures, you come out with these figures as to the breakdown between the creamery and the dairy? A. That is correct.

The Court: What are the figures again?

Mr. Davis: Would you give them again.

A. For the creamery, \$33,113.98, and for the dairy, \$23,887.60.

Q. Now, where have you put that rent? Would you [334] put that under dairy or creamery, or neither? A. That is in the creamery.

The Court: Pardon me, Mr. Allyn: On March 14 I made what appears to be a clear note saying that—I will read it:

“Allyn estimate: On basis of calculation made for 1944, profits for 1945 of creamery, \$20,457.87; dairy, \$36,543.71,” making a total of \$57,001.58. And on the margin I wrote: “Figures for 1945 on basis of 1944.” The figures today are totally different.

The Witness: Those figures were amended and in favor of the creamery. (Witness again took something from brief case at counsel table.) I beg your pardon, in favor of the dairy. I may have an earlier—I thought that these figures that I brought with me were the corrected figures.

The Court: Well, if you wish to make further examination of the figures, we can suspend this to a later time. You may go ahead, Mr. Davis.

(Testimony of Marvin Allyn.)

The Witness: Did we submit that schedule in evidence?

The Court: I think not, because otherwise I wouldn't have made a note of it.

Mr. Davis: I don't think we did either.

The Court: I made the note and may have made an error in making the note, but it seems reasonably clear to me now that you did so testify.

The Witness: There was an adjustment [335] made when I found an error that I had made in following his, and I corrected figures, but I thought that I had the corrected figure here.

Mr. Davis: Well, do you know at this time which is the correct figure, the one you gave the judge before or the one you gave now? If you don't know, I will ask for further time for you to prepare them so you can present the correct figure to the Court.

A. I wish to do that.

Mr. Davis: You Honor, may I have that?

The Court: Very well, that may be taken up later.

Mr. Davis: I think the figure you gave before was the corrected figure. I think you have gotten hold of an old sheet today. That is all, Mr. Allyn.

### Redirect Examination

By Mr. Grigsby:

Q. Mr. Allyn, you said awhile ago something about the gross receipts from bottled milk being 78 per cent as to 22 for ice cream and creamery products.

A. Of cash sales.

(Testimony of Marvin Allyn.)

Q. Of cash sales? A. Yes.

Q. Based on charges, isn't it.

A. An examination of charge sales slips which, of course, shows the product.

Q. Well then, your gross receipts for bottled milk is 78 per cent of the total receipts from the creamery-dairy, isn't that right? And the creamery 22 per cent—that's gross?

A. On the basis of a charge sale, that appears to be true.

Q. Well, still you say that the creamery, [336] according to the figures you first gave his Honor, made about—what is their figure, \$21,000?

The Court: You mean the figure given on March 14?

Mr. Grigsby: Yes.

The Court: Creamery made \$20,457.87, according to the note that I have here.

Mr. Grigsby: Now, you said the other day, and you say now, that that is based upon some kind of a calculation you made for the operations of 1944?

A. Made by a previous accountant.

Q. Something with reference to—according to the settlement of 1944? Did you say, settlement of 1944?

A. I used that term. It may have been ill chosen.

Q. Did you mean agreement, by that word, between the dairy producers and the co-op?

A. It was the accountant's work paper.

Q. Well now, in doing that—in getting up that

(Testimony of Marvin Allyn.)

work paper to try to find out what the creamery made in '45, why didn't you apply that system to '45 instead of to '44, and then base it on '44? They had the same system of bookkeeping down there in '44 and '45, didn't they?

A. I think that point was made, that the mechanics were established for the 1944 fiscal year, which I adapted the figures and applied the same system to 1945 operations.

Q. Well, did you ascertain then, when you took those mechanics that you applied to '44, what the creamery made in 1944—in figures.

A. Well, that was done the previous year. [337]

Q. Well, have you got that somewhere?

A. In 1944?

Q. Yes, what the creamery made in 1944—the net profit?

A. I do not have that work sheet—yes, I have, too.

Q. Now, have you a work sheet there showing what the creamery made in 1944?

A. According to this separation in 1944 the creamery earned—apparently earned \$14,607.24.

Q. And in arriving at that, have you charged the creamery with their proportion of general administration expenses — segregated it from the dairy?  
A. General administration?

Q. Yes, have you segregated their proportion of their expenses that is charged on the books to dairy-creamery?  
A. That is correct.



(Testimony of Marvin Allyn.)

Q. You have deducted that?

A. That is correct.

Q. And also the operating expenses?

A. That is correct.

Q. And what is the proportion of the indirect overhead—what's the figure you charged to the creamery part of it for 1944?

A. It appears to be \$4,380.11.

Q. And what's their operating expense?

A. \$15,458.68.

Q. May I look at that sheet?

A. Uh-huh. It will take some figuring out. Here is the calculation that was used.

Q. Is there any item in there showing you what you paid for eggs?

A. What they paid for eggs?

Q. Not powdered eggs, but—

A. In purchases? No.

Q. Anything there showing—

A. These are sales, and here are your cost of goods [338] sold.

Q. You just got the total cost of goods sold?

A. That is correct.

Q. But you don't know what they paid for powdered milk?      A. No.

Q. What is the total cost of goods sold?

A. Total cost of goods sold for the department?

Q. To the creamery part?

A. That would be \$23,648.67.

Q. Now, you gave the figure 45,000 awhile ago as the cost of goods sold. What was that?

(Testimony of Marvin Allyn.)

A. 45? I believe that was the separation as between the dairy and creamery allocated on the same basis as this.

Mr. Davis: For what year?

The Witness: For 1945.

The Court: I still do not understand what the amount of \$45,231.22 represents. I evidently missed part of your testimony. In answer to one of Mr. Davis' questions you gave that figure.

Mr. Grigsby: That's what I was asking about.

A. That is coming back to this figure which I gave which we are now questioning—this report, which I am afraid I have the original figures, which differs with yours.

The Court: What, in your present judgment, does the \$45,231.22 mean? What does that indicate?

The Witness: That is the cost of goods sold, which, on the basis of the available records and in the judgment of the accountant and manager, should be charged to the creamery department. [339]

The Court: That includes milk, eggs and everything else—cost of goods sold?

The Witness: Ice cream—yes.

The Court: The elements that go into ice cream?

The Witness: That is right.

Mr. Grigsby: Now, Mr. Allyn, your audit for 1945 shows the cost of goods sold, creamery-dairy, \$178,422.88. A. That is correct.

Q. And you gave us the figures that of that \$136,131 was paid to the milk producers?

A. Yes.

(Testimony of Marvin Allyn.)

Q. Which leaves about \$42,000 the cost of all other goods. Now, you say it is 45,000 and something?

A. Well, that is this—this correction I made in my calculation, which I am going to check up for you and present.

Q. And this isn't right, then?

The Court: You had better show it to the witness.

(Mr. Grigsby handed paper to the witness.)

The Witness: Now, you are questioning—these figures are correct.

Mr. Grigsby: All right, the total cost of goods sold is \$176,422? A. Yes.

Q. Of that \$136,313 was paid to the milk producers?

A. It is this separation of—trying to break these down.

Q. Well, that is what I am trying to do now.

A. As between the dairy and creamery is where we [340] are running into the difficulty and I am questioning these figures.

Q. Well, this shows approximately \$42,000 paid for goods besides what you bought of the dairy farmers? A. That's correct.

Q. And you have 45 there. I was just trying to account for that discrepancy; that's all.

The Court: That is all.

The Witness: Well, we are using a different

(Testimony of Marvin Allyn.)

figure there. Now, what we call—of the 178,000, you arrived at that 42,000 by a process of subtraction.

Mr. Grigsby: Yes. And I am splitting it on the—subtracting here the manufactured products and the creamery, and I believe that I will bring you a figure which will agree with that when I get my corrected figure.

The Court: That is all. Another witness may be called.

Mr. Davis: I would like to just let that ride, your Honor, until we find out whether the figure he previously gave you or the one today is the correct figure.

The Court: Mr. Allyn may be recalled later.

Mr. Davis: At this time, before you call another witness, I would like to present to the Court Mr. Snodgrass' copy of what is on the blackboard for illustration of Mr. Snodgrass' testimony.

The Court: Well, Mrs. Annabel, will you compare these figures, and if they are correct, mark that sheet of paper as Defendant's Exhibit No. 5, given to illustrate the testimony of the witness [341] and reproduce on paper what appears on the blackboard.

You may go ahead.

Mr. Grigsby: Mr. McAllister.

FRANK McALLISTER

heretofore duly sworn, resumed the stand and further testified as follows:

Direct Examination

By Mr. Grigsby:

Q. Mr. McAllister, do you recall calling at the co-op office, in 1945, or '46—you can call my attention to the date later—and making an inquiry as to what the creamery made in '45?

A. I do. It was in 1946—the spring of 1946. It was right after, or shortly after the books were audited and we had found out that there was no money—or there wasn't going to be any pay out of what we had coming in the pool, and there was—I met with the Board, I think, three times and we kept discussing this and inasmuch as I had heard indirectly at different times, especially ice cream mix which was sold to the Army, they had made—the co-op had made application to the OPA to increase the price of ice cream mix to the Army, and according to the head of the OPA there, who—it was a Mrs. Johnson—got up in the meeting—we had a regular meeting there—and stated that this application had been made and they would give the forms to the management to fill out, but that's the last she had ever heard of it. So the price of ice cream mix hadn't been increased, and [342] as I understood it at that time—it was told to me there in the office — that they were selling, approximately, ice cream mix to the Army for \$1.90 and it was costing

(Testimony of Frank McAllister.)

them \$1.80 to manufacture it, leaving about 10c balance on the ice cream mix. And I questioned at the time that they had made any money and I still—on the ice cream or ice cream mix either.

Q. Well, did you ask in the office what they had made for 1945?

A. I did. That was—then after this discussion, that's when I asked them what was made. At that meeting they didn't have it available for—or they didn't give me the information of what they could make. But then I was called on a committee to meet with part of the Board to discuss ways and means of clearing up this question of the pool, and at that time, then, Mr. Harrington, who was the former accountant, stated that they had made a little over \$4,000 in the ice cream and ice cream mix. That was the figure that he gave there. And Mr. Stock and Mr. Linn and Mr. Harrington—we were all on a committee, and I think there was one more party on that committee, but I don't recall just who it was, but it is in the record, though. But that is the statement that our former accountant made, that he figured, on some basis—I don't know what figure basis he figured on—that they had made over \$4,000. They must have the record on that somewhere.

Q. 4,000 for ice cream and ice cream mix? Did that include any of their other products of the creamery, or all of them? [343]

A. Well, he didn't state whether or not that was eggs. As far as I recall, there was no—

(Testimony of Frank McAllister.)

Q. But I mean any other products?

A. No other products but ice cream and ice cream mix and popcicles.

Q. That's what I am alluding to.

A. In other words, all other manufactured products they designate as creamery, with the exception of eggs. I don't recall whether or not eggs—

Q. That auditor—what was his name?

A. Harrington. He was the former accountant—the accountant at that time.

Q. And he gave you this information at a meeting between you and, you said, some of the Board of Directors?

A. Yes, it was a committee.

Q. A committee from where—the dairymen?

A. Well, after I had met with the Board they decided to form a committee to go over this pool situation and figure out if there was—what we was after in the first place was to find out if some method could be set up to prevent a reoccurrence of the losses in '45, and that was the reason this came out. And in questioning what was made in the ice cream and ice cream mix, or what they called the creamery up there, he estimated that that was what they made.

Mr. Grigsby: That's all.

The Court: Counsel for the defendants may examine.

(Testimony of Frank McAllister.)

Cross Examination

By Mr. Davis:

Q. Mr. Harrington is the one whose place Mr. Allyn [344] took?           A. I believe so.

Q. He was the accountant at the co-op?

A. He was the accountant.

Q. And this conversation took place at a meeting between a committee and the Board of Directors?

A. It was between myself, and Mr. Harrington and two members of the Board of Directors.

Q. Do you remember who the two members were?

A. Mr. Stock was one of them and I am sure Frank Linn was the other.

Q. Can you give us the approximate date, Mr. McAllister?

A. Well, I have a letter that I sent to the Board over this question (looking into his pockets). It has a date on it. And that meeting was shortly after—March 20—it's right around March 20. I gave them a letter on March 4 and told them action would be taken if nothing was done before March 20. So it was right around that time.

Q. That is 1946?           A. Yes.

Q. Is it '46 or '47?           A. '46.

Q. That's all.

Mr. Grigsby: That's all.

The Court: That is all, Mr. McAllister.

Mr. Grigsby: If you Honor please, with the exception that I was given a little different figure,



which is put in evidence here—Defendant's Exhibit 3 is a statement of the amounts paid to the claimants here in cash for the milk they delivered in 1945, which varies a little from the statement [345] I put in evidence as having been furnished me, and also varies for the reason that Harold Thuma has not been proved to have assigned his claim, and also varies slightly in some other particulars. Now, this morning, Mr. Snodgrass testified that should the Court find that the milk producers are entitled to the amount sued for, or some other amount, that that should be apportioned according to the—pro-rated according to the quantity of milk sold for which cash was paid the same as the 20 per cent payments were apportioned, which is based upon the cash paid, which is the same as the 21.125 per cent. In other words, your Honor, if we recovered for \$57,000 that would be apportioned according to the amounts the farmers have already received for their milk, and with the exception of making that computation so as to have it in figures, we are ready to rest.

The Court: That is a matter of argument. I think counsel can make the computation or have it made for him and present it in the form of a statement or brief.

Mr. Grigsby: Yes, it is really in evidence except the final result, your Honor.

The Court: Yes, that can be made—

Mr. Grigsby: Very well, then; we rest.

The Court: Witness for defendant may be called.

Mr. Davis: I would like to call Mr. Eckert, your Honor.

The Court: Mr. Eckert may be sworn to testify.

### VIRGIL ECKERT

being [346] first duly sworn, testified for and in behalf of the defendant as follows:

#### Direct Examination

By Mr. Davis:

Q. Mr. Eckert, will you state your name please?

A. Virgil Eckert.

Q. Where do you live?           A. Palmer.

Q. Are you a member of the Matanuska Valley Farmers Cooperating Association?

A. Yes sir, I am.

Q. At the present time do you have any official capacity with that organization?

A. Yes, I am the acting manager at the present time.

Q. And do you have any other official position?

A. Well, I am also on the Board of Directors.

Q. How long have you been on the Board of Directors?

A. Well, I was on about a year in '43, I believe. Then I went Outside for a year and when I came back I was elected back on, in '45—I believe in the spring of '45.

Q. And have you been on the Board since the spring of '45?

(Testimony of Virgil Eckert.)

A. No, I beg your pardon. It was '46 when I came back on the Board.

Q. The second time, then, you have been on the Board about a year?      A. That is right.

Q. Now, as acting manager of the co-op, are you in charge of the minutes of that organization? [347]

A. Well, as secretary of the Board, I am.

Q. As secretary of the Board of Directors?

A. Yes.

Q. Are you also secretary of the Board of Directors?      A. Yes sir.

Q. Mr. Eckert, do you have the original minute books of the Matanuska Valley Farmers Cooperating Association there?

A. I have two of them here. There are four of them altogether.

Q. I wish you would look at the minutes for February 10, 1943.      A. I have them here.

Q. All right, commencing where it says the meeting was again called to order at 8:30 p.m.—can you find that?

Mr. Grigsby: Excuse me. Is that the minutes of the Board of Directors?

Mr. Davis: That is the minutes of the Board of Directors. Mr. Eckert, am I correct in that? That is the minutes of the Board of Directors you have there?      A. Yes, it is.

Q. Of the Matanuska Valley Farmers Cooperating Association?

A. “. . . meeting was again called to order at 8:30 p.m. . . .”—is that you—

(Testimony of Virgil Eckert.)

Q. Start there and read to the end of its discussion concerning—the end of the action concerning milk.

A. (Reading:) “In order to allow further discussion with dariymen on milk prices, a motion was made by Snodgrass, seconded by McAllister, that subject to confirmation at the next meeting, the following schedule of milk and cream prices be established, effective Dec. 1, 1942:”

Want me to read further? [348]

Q. The rest, yes.

A: “Grade A. Whole Milk: \$5.10 per cwt for 4% milk with surplus butterfat at current landed cost of butter.

“Grade B Whole Milk: \$3.75 per cwt for 4% milk with surplus butterfat at current landed cost of butter.

“Grade I sweet cream: 10c per pound over landed cost of butter.

“Grade 2 sour cream: landed cost of butter.

“Motion carried.”

Q. Now, Mr. Eckert, did you cause to be prepared copies of those minutes—that particular minute you have just read?

A. I believe we did.

Q. Is that the copy that you had prepared (handing paper to witness.)

A. Yes, it is.

Mr. Davis: Your Honor, I would like to ask that the action taken by the Board of Directors on February 10, 1943, which is—

(Testimony of Virgil Eckert.)

Mr. Grigsby: He said '42, didn't he there?

Mr. Davis: '43, I think—February 10, 1943.

A. Yes sir, that is right.

Mr. Davis: It is effective in December, 42, George. I want to offer it in evidence and I would like to submit the copy rather than the original book.

The Court: Is there objection?

Mr. Davis: I have a copy of it here for you, George, if you want it.

Mr. Grigsby: Very well. [349]

The Court: Without objection it may be admitted in evidence. The copy will be admitted in lieu of the original as Defendant's Exhibit No. 6.

(Defendant's Exhibit No. 6 admitted in evidence.)

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## DEFENDANT'S EXHIBIT NO. 6

Meeting Of The Board of Directors  
Feb. 10, 1943

\* \* \* The meeting was again called to order at 8:30 p.m. with the same Directors present.

In order to allow further discussion with dairymen on milk prices, a motion was made by Snodgrass, seconded by McAllister, that subject to confirmation at the next meeting, the following schedule of milk and cream prices be established, effective Dec. 1, 1942:

Grade A Whole Milk: \$5.10 per cwt, for 4%

(Testimony of Virgil Eckert.)

milk with surplus butterfat at current landed cost of butter.

Grade B Whole Milk: \$3.75 per cwt for 4% milk with surplus butterfat at current landed cost of butter.

Grade 1 sweet cream: 10c per pound over landed cost of butter.

Grade 2 sour cream: landed cost of butter.

Motion carried.

[Endorsed]: Filed August 5, 1948.

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Mr. Davis: Now then, Mr. Eckert, turn to February 13, 1943. That is No. 6 that was admitted?

The Court: No. 6, yes.

Mr. Davis: Now then, Mr. Eckert, can you find motion by McAllister, seconded by Brix, that the new schedule of milk and cream payments be confirmed? A. Yes, I have it here.

Q. Will you read that, please, down to the end of anything pertaining to milk in that meeting?

A: "Motion by McAllister, seconded by Brix that the new schedule of milk and cream payments be confirmed. Motion carried."

"Motion by Brix, seconded by Snodgrass, that a monthly bonus of 25c per hundredweight of whole milk be paid to producers who, during any month between Dec. 1 and May 31 of each year, bring in

(Testimony of Virgil Eckert.)

80% or more of their monthly average for the remaining six months of the year. Motion carried.”

Q. Now, is that all at that meeting that pertained to milk?

The Court: What is the date of that meeting?

Mr. Davis: February 13, 1943, your Honor—three days later than the first one.

The Witness: I believe that is all there is in there about milk.

Q. Now, you have been reading [350] from the minutes of the Board of Directors of the Matanuska Valley Farmers Cooperating Association for February 13, 1943? A. Yes sir.

Q. Is that correct? Now, will you likewise have copies prepared of those minutes?

A. Yes, I believe we did.

Q. Is this the copy that you caused to be prepared (handing witness paper).

A. Yes, that's right.

Mr. Davis: I would like to offer this, your Honor, as a copy in lieu of the original; and here is a copy for you (handing paper to Mr. Grigsby.)

The Court: If there is no objection it will be admitted and marked Defendant's Exhibit No. 7.

(Defendant's Exhibit No. 7 admitted in evidence.)

(Testimony of Virgil Eckert.)

DEFENDANT'S EXHIBIT NO. 7

Meeting of The Board of Directors  
Feb. 13, 1943

\* \* \* Motion by McAllister, second by Brix that the new schedule of milk and cream payments be confirmed. Motion carried.

Motion by Brix, seconded by Snodgrass, that a monthly bonus of 25c per hundredweight of whole milk be paid to producers who, during any month between Dec. 1 and May 31 of each year, bring in 80% or more of their monthly average for the remaining six months of the year. Motion carried.

[Endorsed]: Filed August 5, 1948.

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Mr. Davis: Now then, Mr. Eckert, will you turn to the minutes of January 15, 1944?

A. Yes, I have them here.

Q. Will you find the place where it reads: "A motion was made by Linn seconded by LeDuc that it be the policy of the Association . . ."—you find that?

A. Yes, I have it here.

Q. Will you read that motion, please?

A: "A motion was made by Linn seconded by LeDuc that it be the policy of the Association to distribute its earnings on the following basis:

"1. That the earnings of each department be distributed to the patrons in direct proportion



(Testimony of Virgil Eckert.)

to their patronage in that department, where ever it is possible and practical to do so.

“2. That the earnings of all departments not included in item number 1, together with the losses of any department be [351] allotted to the department included in the item number 1, on the basis of sales and distributed as part of the earnings of those departments.

“3. That earnings of casual sales be allotted in the same manner as earnings included in items number 2.

“Motion carried.”

Q. Now, is that also taken from the official minutes of the Matanuska Valley Farmers Cooperating Association Board of Directors?

A. Yes, it is, of January 15, 1944.

Q. And did you cause copies to be made of that minute?      A. Yes.

Q. Check that and see if that is the copy you caused to be made of that particular minute (handing paper to witness.)      A. Yes, it is.

Mr. Davis: I would like to offer this, your Honor—copy as an exhibit in lieu of the original. (Handed a paper to Mr. Grigsby also.)

Mr. Grigsby: Just a minute before—we object to this last offer as immaterial—not related to the issues in the case.

The Court: Objection is overruled. It may be admitted and marked Defendant’s Exhibit No. 8.

(Testimony of Virgil Eckert.)

(Defendant's Exhibit No. 8 admitted in evidence.)

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DEFENDANT'S EXHIBIT NO. 8

Palmer, Alaska, January 15th, 1944

Minutes

\* \* \* a Motion was made by Linn seconded by LeDuc that it be the policy of the association to distribute its earnings on the following basis:

1. That the earnings of each department be distributed to the patrons in direct proportion to their patronage in that department, where ever it is possible and practical to do so.
2. That the earnings of all departments not included in item number 1, together with the losses of any department be allotted to the department included in the item number 1, on the basis of sales and distributed as part of the earnings of those departments.
3. That earnings of casual sales be allotted in the same manner as earnings included in items number 2.

Motion carried.

[Endorsed]: Filed August 5, 1948.

(Testimony of Virgil Eckert.)

Mr. Davis: Will you turn now, Mr. Eckert, to the minutes for October 7, 1944—

Mr. Grigsby: We wish to also add to the objection—and not binding on the plaintiffs [352] in this action.

The Court: Objection is overruled.

The Witness: I have it here, Mr. Davis.

Mr. Davis: “Motion made by Hoffman seconded by Patten . . .” Can you find that?

A. Yes, I have that one here.

Q. Will you read that motion, please?

A: “Motion made by Hoffman seconded by Patten that Milk Bonus be increased to fifty cents per cwt and the time effective be September first to March first on both Grade A & B milk. Carried.”

Q. And that is from the official minutes of the Board of Directors of the Matanuska Valley Farmers Cooperating Association?

A. Yes, sir, it is.

Q. For October 7, 1944?

A. That's right.

Q. Did you cause copies to be made of that minute?

A. Yes sir.

Q. I will hand you this paper and ask if that is the copy you had prepared of that minute?

A. Yes sir, it is.

Mr. Davis: I would like to offer this paper, your Honor, as a copy in lieu of the original minute.

The Court: That may be admitted and marked Defendant's Exhibit No. 9.

(Defendant's Exhibit No. 9 admitted in evidence.)

(Testimony of Virgil Eckert.)

DEFENDANT'S EXHIBIT NO. 9

Palmer, Alaska

October 7, 1944

\* \* \* Motion made by Hoffman seconded by Patten that Milk Bonus be increased to fifty cents per cwt and the time effective be September first to March first on both Grade A & B Milk. Carried.

[Endorsed]: Filed August 5, 1948.

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Mr. Davis: Now, will your turn, please, to March 16, 1946—

Mr. Grigsby: Are you going to be much longer with this witness?

Mr. Davis: Yes, I expect to be sometime with this witness, [353] but I would like to finish this particular phase of it. I have two more proffered exhibits.

Mr. Grigsby: Couldn't it be done tomorrow morning?

Mr. Davis: I can't try this case tomorrow morning.

Mr. Grigsby: Very well.

The Witness: I have it here, Mr. Davis.

Mr. Davis: Can you find "Mr. C. R. Monaghan came in at this time"?

A. I don't see it in that particular minutes, Mr. Davis.

Q. What's that?

(Testimony of Virgil Eckert.)

A. I don't see it in that particular——

Q. March 16, 1946?

A. March? Oh, I have February 16. Yes, that is in the minutes here: both Mr. McAllister and Mr. Monaghan came in.

Q. Will you read what is in the minutes about that conference?

A. It says in here that Mr. McAllister came in at this time to discuss the members' marketing contract, calling special attention to Paragraph (7) and (8) of the contract. There was a long and serious discussion on this matter with many good ideas being brought out. Mr. C. R. Monaghan came in at this time also and asked that the price of milk not be lowered during the summer, stating that the financial report of the creamery justified that the price of milk stay the same as during the winter months.

Mr. Grigsby: What is the date of that, please?

Mr. Davis: March 16, 1946.

Read the next paragraph too, please. [354]

A. The President appointed a committee of four, Mr. Stock, Mr. Linn, Mr. McAllister and Mr. Harrington, to meet and work out and formulate a plan for a milk pool to be set up for the future. The committee was to meet March 20.

Q. Now, I notice that on the copy that has been prepared here, we didn't get in the part about Mr. McAllister. We started with Mr. Monaghan. I am going to reserve that for a future date to get that

(Testimony of Virgil Eckert.)

just the way the minutes read. Look at March 22, 1946, please?      A. Yes, I have that here.

Q. A motion was made by Sherrod?

A. Yes sir.

Q. Read that, please?

A. "A motion was made by Sherrod seconded by Rebarcheck that such records as are necessary be maintained in Creamery and Dairy as to accurately reflect the effect of various operations within these units on the total years operations. Also, a milk pool be established as of December 1, 1945 for the fiscal year of 1946 on the following basis:

"(1) That the distributable overages be returned to the producers on the basis of the dollar value of products delivered to the association.

"(2) All distributable overages from the sale of milk and cream.

"(3) The overages from the sale of ice cream mix and cottage cheese, only in the percentage that milk is used."

All voted in the affirmative.

Q. There is another motion, I believe?

A. "A motion was made by Sherrod, seconded by Rebarcheck that the winter price paid for milk be continued on through April. Roll Call: All voted in the affirmative." [355]

Q. Now, that is the minute of the Matanuska

(Testimony of Virgil Eckert.)

Valley Farmers Cooperating Association Board of Directors for March 22, 1946? A. Yes, sir.

Q. Did you cause to be prepared a copy of that minute? A. Yes.

Q. Is that the copy which was prepared?

A. Yes, sir.

Mr. Davis: I would like to offer this copy, your Honor, in lieu of the original minute which has been read. (Handed a paper to Mr. Grigsby also.)

The Court: It may be admitted and marked Defendant's Exhibit 10.

(Defendant's Exhibit No. 10 admitted in evidence.

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DEFENDANT'S EXHIBIT No. 10

Minutes—March 22, 1946

(Special)

\* \* \* A motion was made by Sherrod, seconded by Rebarcheck, that such records as are necessary be maintained in Creamery and Dairy as to accurately reflect the effect of various operations within these units on the total years operations. Also a milk pool be established as of December 1, 1945, for the fiscal year of 1946 on the following basis:

(1) That the distributable overages be returned to the producers on the basis of the dollar value of products delivered to the association.

(2) All distributable overages from the sale of milk and cream.

(Testimony of Virgil Eckert.)

(3) The overages from the sale of ice cream mix and cottage cheese, only in the percentage the milk is used.

Roll call: All voted in the affirmative.

A motion was made by Sherrod, seconded by Rebarcheck, that the winter price paid for milk be continued on through April. Roll call: All voted in the affirmative.

[Endorsed]: Filed August 5, 1948.

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Mr. Davis: Now, your Honor, it seems to be apparent we can't finish tonight. It is five minutes after four now. I would like to ask that the trial of this case be continued for a period of ten days. I intend to leave tomorrow for Seattle. I expect to be back in a week. But in order to cover any eventuality I would ask that it be postponed for a period of ten days.

Mr. Grigsby: If the Court please, I object to any continuance. The 1947 season is well under way, and the plaintiffs are anxious to have this case determined as soon as possible. I supposed it was set for trial with the understanding it would be finished.

Mr. Davis: Well, your Honor, I don't think I have been delaying the trial. I just got to my case 15 minutes ago. [356]

Mr. Grigsby: But you are about to ask for ten days' delay, which I object to. I don't see any reason.



(Testimony of Virgil Eckert.)

Mr. Davis: I previously let it be known I intended to ask for the delay before we went on at this time. I had hoped to get the evidence in today, but it seems apparent we can't.

Mr. Grigsby: How much longer will it take to get in your evidence when you get back?

Mr. Davis: I don't know.

Mr. Grigsby: Well, over a day?

Mr. Davis: I don't think so.

The Court: The trial will be continued until April 18 at 11 o'clock in the morning. April 18 is Friday and we may have some matter on the motion calendar to take up, and so we will take up this case at 11, and I earnestly hope that we will be able to conclude it then and that counsel, when the evidence is in, will be ready to argue the case. In the meantime, if counsel have any judicial opinions or decisions that the Court ought to know about I would like to have you submit lists as soon as possible.

Mr. Davis: At the time we adjourned last time, I mentioned I had two books on co-op law. I intended to leave them for your Honor, but I did not. Do you wish them at this time?

The Court: You may leave them either at my office or in the library and I will get them. They will be available to Mr. Grigsby, too, if he wishes. [357]

Mr. Grigsby: Your Honor, also it seems to me important and it should be within the power of the defendant—it isn't in our power—to produce the figures showing the creamery profits, if any, of 1945?

(Testimony of Virgil Eckert.)

The Court: Well, the Court will now instruct the defendant to produce those figures if they are available. I realize that the figures may be available only as the result of the expenditure of very considerable sums of money in a re-audit of all the books. That being the case, I would not expect to have the books re-audited to secure the figures which counsel for plaintiff has mentioned.

Mr. Davis: Well, insofar as possible, your Honor, we will furnish a true, accurate breakdown of the profits of the creamery and the dairy for the year 1945.

The Court: Very well, perhaps that will be sufficient. Is there anything else? You may step down, Mr. Eckert. I think that counsel do not care to proceed any further at this time.

Mr. Grigsby: No, your Honor. We can't make enough headway to justify the delay.

The Court: Very well, trial will be continued as stated heretofore.

(Whereupon adjournment was had at 4:10 o'clock p.m.)

(On Tuesday, July 15, 1947, the following further proceedings were had:)

The Court: This is the time set for the continuance of the [358] trial of the case of C. R. Monaghan vs. the Matanuska Valley Farmers Cooperating Association, No. A-4252.

Mr. Davis: Your Honor, before proceeding, at the time we met last, Mr. Grigsby asked that cer-

tain figures from the original records be furnished to him. It has developed that it has been impossible to dig out those figures. The defendants have brought down the original records in question and they are here in the court room available for examination by Mr. Grigsby or anybody that he may wish to have examine them.

Now, at the time we suspended, I believe Mr. Eckert was on the stand. Am I right?

The Clerk: Yes.

Mr. Davis: So far as I am concerned, I am done with Mr. Eckert, subject to cross-examination by Mr. Grigsby.

The Court: Mr. Eckert may resume the stand.

Mr. Grigsby: No cross.

Mr. Davis: At this time, then, I would like to call Mr. Allyn.

### MARVIN ALLYN

heretofore duly sworn, resumed the witness stand and testified for and in behalf of the defendant as follows:

#### Direct Examination

By Mr. Davis:

Q. Mr. Allyn, at the time you were testifying for Mr. Grigsby some testimony was put in concerning the relationship [359] between the business done by the so-called Creamery Department and the business done by the so-called Dairy Department of the co-op, and at one time you gave the Court one

(Testimony of Marvin Allyn.)

figure on that relationship and at another time you gave him another figure, and the Court asked you to clear up the discrepancy between those two figures. Will you go ahead at this time, now, and tell the Court—clear up that discrepancy if you can?

A. The first figure inadvertently was a preliminary calculation which I made during the first two weeks of my—in the Valley. Further examination required a revision of those figures. Subsequent to the last session of the court, when I had the opportunity to review this material again, it was called to my attention that the year 1944 and 1945 are not applicable and the arbitrary method used in 1944 could not be applied to 1945 because of the fact that you had no eggs handled through the department in '44, and eggs were a considerable part of your business in 1945. So, an arbitrary system wouldn't apply to the two years.

Q. Now, Mr. Allyn, are the two years, 1944 and 1945, then, comparable in the breakdown between the Creamery Department and the Dairy Department? Can they be compared from the figures that are available? A. No, they can not.

Q. And what, then, about this testimony you gave us? Is it valid testimony as to the breakdown between the two, or should that be disregarded?

A. From my standpoint, it should be disregarded. [360]

Q. Is there any way you have been able to work out a relationship between the creamery and the dairy from the year 1945?

(Testimony of Marvin Allyn.)

A. It has not been possible.

The Court: Between what?

The Witness: '44 and '45.

Mr. Davis: The relationship, your Honor, between the creamery and the dairy for '44 and '45—the proportionate parts of the two. Mr. Allyn, as I remember it, gave testimony that he thought he could project the creamery did such and such proportion of the total business and the dairy did such and such proportion of the total business for 1945, based on a computation which had been made in 1944. Later in another session he gave another figure and your Honor asked him what was the discrepancy between those two figures. As I understand it, his testimony now is that neither figure should have any effect—that it is just impossible to figure out any such relationship. Mr. Allyn, can you give us the figure of the money paid to egg producers for the year 1945?

A. Approximately 34,700.

Q. And would that item, 34,700, be part of the item, costs of goods sold under the dairy-creamery department?      A. It would.

Mr. Davis: That's all, Mr. Allyn.

The Court: Just a minute. Mr. Grigsby may have some questions.

Cross-Examination

By Mr. Grigsby:

Q. And did you find out what your profit was on those eggs [361] that you paid \$34,700 for?

(Testimony of Marvin Allyn.)

A. No.

Q. Then you can't find that out? A. No.

Mr. Grigsby: No cross.

Mr. Davis: I have one further question, your Honor, that I should have asked him.

The Court: Go ahead.

### Direct Examination

By Mr. Davis:

Q. I think that this has been covered, but this case has been handled over so long a time it is hard to tell. Mr. Allyn, I think it is already in the testimony that the amount paid the farmers is kept——

The Court: Will you start over again? I missed one or two words.

Mr. Davis: I said, I think it is in evidence that the amount paid to the farmers for eggs and for milk and other items is kept separate. Is that right? A. That's correct.

Q. But that the amount of income—the amount of revenue—is not kept separate for the various items? A. That is correct.

Q. In other words, the Dairy Department receives so much gross revenue, but you don't know what the revenue came from?

A. That's right.

Q. Whether eggs, ice cream, milk or whatever it might have been? A. That is right.

Mr. Davis: That is all. [362]

(Testimony of Marvin Allyn.)

Cross-Examination

By Mr. Grigsby:

Q. Are those eggs all sold as fresh eggs—those eggs that you paid \$34,700 for in the year in question, 1945? Were they sold as fresh eggs on the market? A. As far as I know.

Mr. Grigsby: That's all.

Mr. Davis: That's all.

The Court: Another witness may be called.

Mr. Grigsby: Just one other question, Mr. Allyn: These books that Mr. Davis mentioned, you have been unable to dig out from the books after an effort the percentage of earnings of the creamery as compared with that of the milk sold by the dairymen? Is that what you stated?

A. That's right.

Q. And what is in these books that an examination can reveal? What can I find out from examining those books? Can I find out from those books what you made on the creamery? A. No.

Q. You have just offered me the books?

A. That's right.

Q. To show that I can't find out anything from them?

A. To show that you can search through all of those invoices, one by one, and find out the questions you were asking on how much was paid for powdered milk.

Q. Or any of the other—rest of the information I want? A. No.

(Testimony of Marvin Allyn.)

Q. I can't find it?

A. You cannot find out what labor is applicable to eggs or to the various products. Your overhead [363] expenses you cannot apply to the various products.

Mr. Grigsby: That's all.

Mr. Davis: That's all. I would like to call Mr. Stock.

### L. C. STOCK

being first duly sworn, testified for and in behalf of the defendant as follows:

#### Direct Examination

By Mr. Davis:

Q. Mr. Stock, will you state your name, please?

A. L. C. Stock.

Q. Where do you live?           A. In Palmer.

Q. How long have you lived in Pamer?

A. Since March, 1939.

Q. And, beginning in 1939, did you have an official position with the Matanuska Valley Farmers Cooperating Association??

A. Yes, sir, I was general manager from that date until November 30, 1943.

Q. What date in 1943?           A. November 30.

The Court: When did you first take over the office?

The Witness: In March, 1939; I believe it was the 17th of March when I arrived there.



(Testimony of L. C. Stock.)

The Court: Served until November 30, 1943?

A. Yes, sir.

The Court: Very well.

Mr. Davis: Since you left the co-op as general manager, Mr. Stock, have you at various times had other official capacities in the co-op?

A. Yes, sir. I was a member of the Board [364] of Directors for a short period in '45, and then I went into business and resigned and then was re-elected again the next year and served for a year and a half then as a member of the Board.

Q. Now, at the time that the trial was being held before, you were a member of the Board, is that correct?

A. Yes, sir, I was President of the Board at that time.

Q. And you are not a member of the Board now?

A. No, sir.

Q. When did you go out of office, Mr. Stock?

A. About six weeks ago, I believe.

Q. Roughly, about the first of June?

A. Yes.

Q. In 1947? A. Yes.

Q. Now, Mr. Stock, then, from 1939 until the present time have you been pretty close in touch with the affairs of the Matanuska Valley Farmers Cooperating Association? A. Yes, sir.

Q. And during that time have you observed the workings of the co-op and the purchase of milk by the co-op and all that sort of thing?

(Testimony of L. C. Stock.)

A. Yes, sir. I set up that procedure.

Q. Will you start at the beginning, Mr. Stock, back in 1939 at the time you were first general manager and bring down to the present time the way that milk purchases have been handled by that co-op, to your knowledge?

A. When I first arrive in Palmer in '39, the cooperative had no function other than an advisory capacity, and they had transferred their entire authority to the Alaska Rural Rehabilitation Administration through a marketing or management contract. After several months' work on the part [365] of myself and the Board of Directors at that time, we requested of the Corporation that they turn over the operation of the three units known as the Creamery, Produce and Meat Departments, which were all running heavily in the red and which contributed to the incomes of the farmers. That was done, and on the creamery we immediately set up—started to obtain new markets for dairy products. The only commodity being purchased at the time that the units were turned over to the cooperative was sour cream. If I remember correctly, we classified as dairymen approximately 75 or 80 people who were living in the Valley, and we called anyone a dairyman who delivered any sour cream, regardless of the amount, to the creamery, and some of it came in there in as small amounts as two or three pounds at a time. The farmers were paid, if I remember correctly, 33c a pound for that butterfat. We developed the cottage

(Testimony of L. C. Stock.)

cheese and the buttermilk markets, started the manufacture of ice cream and then purchased the dairy in Anchorage—Peterkin Dairy—and equipment and their stock, and started to retail fluid milk in the Anchorage market. Our first increase that had any reflection to the farmers, we started to buy sweet cream at 60c a pound. When we went into the fluid milk market we purchased the milk on a butterfat basis for a dollar a pound. It was necessary to have additional outlets down here because we did not get the plant of the Peterkin Dairy, so we constructed the present Anchorage Dairy plant and building for that purpose from the Association funds, and attempted to tap each [366] market that presented itself that could reflect back to the farmer, either in his original payment or in additional earnings at the end of the year more money for the dairy products.

If I remember correctly, after we had started into this fluid milk business, we quit the purchase of sour cream because all of the farmers who had sufficient cows at all went into the milk business or into the sweet cream business for the use in ice cream and discontinued the manufacture of butter.

In our payments we attempted to—in the early days, when we were first getting started, while I had had considerable experience in the milk industry Outside, I had had none in Alaska and conditions were different, and together with the Board of Directors and the best advice we could get we attempted to set the price of milk as close to the top

(Testimony of L. C. Stock.)

as we possibly could and still leave a margin of safety for operation, and in each year when the profits, or the business of the Association, had been determined, to advance that price to the farmer and still maintain that margin of safety in the operations. And in addition to that, any overages that were indicated as applicable to that particular department, if the Association as a whole made a profit, that unit shared in that profit in proportion to the amount of earnings which the profit and loss indicated was due them.

Q. Mr. Stock, when you left the managership of the co-op did you go into business for yourself?

A. Yes, sir. [367]

Q. What business did you go into?

A. Restaurant business and farming.

Q. And as a farmer, did you deal with the co-op?

A. Yes, sir.

Q. And are you one of the milk producers?

A. No, sir. I sell eggs, potatoes and vegetables.

Q. Now, you are familiar with the people who have been on the Board of Directors over the last several years, are you not?

A. Yes, sir.

Q. Will you tell the Court approximately the number of members of the cooperating association—Matanuska Valley Farmers Cooperating Association—in the year in question, 1945?

A. As I recall it, there was approximately 130 members.

Q. Are those all active members, Mr. Stock, or

(Testimony of L. C. Stock.)

are there some of those members that wouldn't be doing any business with the co-op?

A. Well, I would say they are all members who had sold some agricultural product to the Association during the previous year.

Q. Then you would call them to some extent active members?           A. Yes.

Q. Can you give the Court an approximation of how many dairymen there were the previous year, people who sold milk to the co-op?

A. I think there were 20 or 21 Grade A men and seven or eight Grade B men.

Q. Now, Mr. Stock, have the dairymen been represented on the Board of Directors of this co-op since, say, 1942?

A. I don't [368] recall any instance in which the dairymen were not in a majority on the Board at all times.

Q. During all the time since, say, 1942?

A. Yes.

Q. Now, Mr. Stock, is there anything else that you can add to clarify to the Court some of these matters that I haven't asked you about?

A. Only in the set-up there we have a unique organization. In most cooperatives they are organized for one particular purpose, either to sell milk, to sell beans, to retail merchandise or to handle one commodity—eggs or butterfat or milk or whatever it might be. The very nature of the installation up there—they have various activities and, of course, they must be intermingled. It was set up

(Testimony of L. C. Stock.)

originally with federal funds and then became the cooperative, making it possible for them to take over by borrowing federal funds. It immediately became an obligation upon all the Association, and when this question was first presented to the Board, of which I was a member, our attitude was that there was \$2800 to distribute and we knew of no legal or any other obligation that would permit us to segregate one unit away from the other and distribute as overages anything other than the profits indicated by the Association as a whole. It was our belief, and we have been taught—I have been taught, in my business life—that it is not proper to distribute earnings out of anything except earnings. It cannot come out of capital, and that was my reason for my decision and the answer that I gave the boys at that time. While [369] I sympathized with them, it was one of those things I could see no out on. If any other policy had been followed the Association would have been broke a long time ago.

Q. Mr. Stock, you weren't present up there at the time that this corporation—this Association—was first organized, were you? A. No, sir.

Q. In the matter of your duties as general manager did you go into the matter of the original formation of this matter and the subsequent amendment of the Articles and all that sort of thing?

A. Yes, sir.

Q. Will you tell the Court something about that—the relationship between this organization and

(Testimony of L. C. Stock.)

the so-called Corporation—the ARRC—and all that sort of thing?

A. Well, the Alaska Rural Rehabilitation Corporation was the agency——

Mr. Grigsby: We object to it as immaterial, if the Court please.

The Court: I do not see the pertinency of it, Mr. Davis.

Mr. Davis: The thing I am trying to bring out, your Honor, is the fact that this agreement here actually was made up by the ARRC, or some other agency, back about 1936. Many of these parties actually signed it way back when they first moved up to the Valley. Since that time the cooperative association has changed back—I think this was in '37—they changed their setup and later took over the facilities that the ARRC had. And I thought it might be helpful to the Court to go into that for [370] the record.

The Court: Objection is overruled. You may inquire.

Mr. Davis: I don't know. Possibly your Honor already has judicial notice of what took place there. I don't know. I don't want to encumber the record.

The Court: Well, I suppose there has been some general reference to it during the trial of the case. I do not see that it has any direct bearing, at least, upon the question which is now being presented.

Mr. Davis: Well, if it hasn't let's not get into it. That is all, Mr. Stock.

(Testimony of L. C. Stock.)

The Court: Counsel for plaintiff may examine.

Cross-Examination

By Mr. Grigsby:

Q. What, Mr. Stock, is your business now?

A. I beg your pardon?

Q. What is your business down there now?

A. I am part owner of a restaurant and developing a farm.

Q. What? A. Developing a farm.

Q. Well, are you growing some products?

A. Yes, sir.

Q. Did you sell any last year?

A. Yes, sir.

Q. To any substantial amount?

A. Not any great amount because I didn't move on my farm until June last year.

Q. What was that?

A. Not any great amount because I didn't move on my farm until June last year. [371]

The Court: Will you speak a bit louder, Mr. Stock, so that counsel can hear you?

Mr. Grigsby: I didn't get your answer.

The Witness: I say, I didn't sell a great amount last year because I didn't move on my farm until June.

Q. Well, you are a member of this Association defendant? A. Yes, sir.

Q. And you have a contract with the co-op down there to run this restaurant? A. Yes, sir.



(Testimony of L. C. Stock.)

Q. You ran it last year? A. Yes, sir.

Q. How many years have you run it?

A. I didn't hear you.

Q. Huh? A. I didn't understand.

Q. How many years have you had that business?

A. About two years.

Q. And you have made a profit both years?

A. Profit on what, the restaurant?

Q. Sir? A. Profit on the restaurant?

Q. Yes.

A. Yes, we have made some profit on the restaurant.

Q. Now, Mr. Stock, are you familiar with these books, that are in evidence here—the 1945, '44?

A. No, sir, only in a general way.

Mr. Grigsby: That's all.

The Court: That is all. Have you any further questions?

Mr. Davis: No further questions.

The Court: That is all, Mr. Stock. [372]

Mr. Davis: Excuse me, your Honor, for about two or three minutes?

The Court: Yes. Court will stand in recess until 11:25.

(Whereupon recess was had at 11:18 o'clock a.m.)

After Recess

The Court: Another witness may be called.

Mr. Davis: Defendant rests, your Honor.

Mr. Grigsby: Your Honor, before the defendant rests, may I ask Mr. Allyn another question?

The Court: Mr. Allyn, will you kindly take the witness stand again?

MARVIN ALLYN

heretofore duly sworn, again resumed the stand and further testified for and in behalf of the defendant as follows:

Cross-Examination

By Mr. Grigsby:

Q. Mr. Allyn, I think you stated for the year in controversy here that you paid \$34,700 for eggs?

A. I believe that's correct.

Q. And you paid approximately \$136,000 for milk?

A. I believe that's correct.

Q. That would make a total—\$136,000 and \$34,700—of \$170,700. Now, the total cost of all creamery and dairy products, according to Plaintiff's Exhibit 3, was \$178,422.88, remember that?

A. Yes.

Q. So that approximately \$8,000 went into other articles [373] used in the creamery, such as powdered milk and whatever you bought from the outside, is that right?

A. You would also have an inventory adjustment to consider.

Q. Well, I am talking about this charge here. There is \$178,422.88 total cost of goods sold to the co-op by the dairy-creamery unit, and of that \$136,000 was paid to milk producers and \$34,700 to egg producers, leaving a balance of some 7,000 and some hundred dollars paid for other?

(Testimony of Marvin Allyn.)

A. That's right.

Q. Goods that went into the creamery-dairy? That would be correct, wouldn't it?

A. (Witness nodded.)

Q. Now, as a matter of fact, you lost money on eggs in 1945, didn't you?           A. I don't know.

Q. Didn't you so state to Mr. McAllister and Mr. Monaghan, in discussing this matter, last spring, and that you wished you were rid of the egg business—that it was a loser?

A. I have no recollection of such a statement.

Q. At a dairy meeting this spring in Palmer? You made no such statement?

A. I made the statement that the egg producers were not carrying their share of the indirect overhead—

Q. What would their share of the indirect overhead be?

A. —in 1947. I made no comment on eggs. I had no information.

Q. Well, what is the indirect overhead per dollar of—it is based on the amount of goods sold, isn't it?           A. It varies, from year to year.

Q. Yes, and it is apportioned according to the amount of [374] business done?

A. That is right.

Q. But it averages 12½¢ a dollar, doesn't it?

A. It was approximately that figure in 1946.

Q. And in 1945 also?

A. It would be indicated in your audit report. I don't recall the figure.

(Testimony of Marvin Allyn.)

Q. All right now, don't your books show—you know what the mark-up on eggs was that you sold to the market?

A. The year in question I do not.

Q. Your books don't show it? A. No.

Q. It was 15c, wasn't it?

A. I don't know.

Q. Well, didn't you so state to Mr. McAllister and Mr. Monaghan at that dairy meeting?

A. I never discussed eggs in 1945.

Q. You haven't the slightest idea?

A. I have not.

Q. Well, do those books show what your mark-up was on eggs? A. They do not.

Q. Do you know anybody that knows?

A. Mr. Snodgrass could probably give you an estimate of that.

Q. Did you buy eggs by the dozen?

A. That's correct.

Q. Know what you paid for them?

A. I do not in 1945.

Q. Mr. Snodgrass——

A. You buy eggs by grade.

Q. Is Mr. Snodgrass here? A. He is.

Mr. Grigsby: That's all.

The Court: Wait a minute. Any further examination, Mr. Davis?

Mr. Davis: No further. [375]

The Court: That is all, Mr. Allyn.

Mr. Grigsby: May I call Mr. McAllister?

The Court: Have you any further testimony, Mr. Davis?

Mr. Davis: The defendant rests, your Honor.

The Court: Very well, rebuttal testimony may be heard.

Mr. Grigsby: Mr. McAllister.

The Court: Mr. McAllister may take the stand.

### FRANK McALLISTER

heretofore duly sworn, resumed the stand and further testified for and in behalf of the plaintiff as follows:

#### Direct Examination

By Mr. Grigsby:

Q. Mr. McAllister, do you recall a conversation you had with Mr. Allyn at a dairyman's meeting last spring down at Palmer?

A. Well, it wasn't exactly that last spring. I believe it was about two months ago at a dairy meeting.

Q. Well, in that conversation did he make any statement with reference to the loss or profit on eggs in 1945?      A. He did.

Q. Did he?

A. Yes, he—I asked him a question, the way it came about, on the price of milk and it was shown here by about—Mr. Snodgrass showed here on the bulletin board, or on the blackboard, that the indirect overhead was 12½c on the dollar. And I know that the mark-up at that time was 15c on a

(Testimony of Frank McAllister.)

dozen eggs. And they run a test on approximately how much it would cost to handle—that is, to candle the eggs, the cartons and to case [376] them and the labor and all the direct overhead. The man that made the test run told me that it was  $8\frac{3}{4}c$  on a dozen.

Q. Now, did they always tell you what the mark-up was?

A. The mark-up—I sold a few eggs in that time and I know the mark-up was  $15c$  a dozen. I questioned Mr. Allyn at that meeting and I asked him if it wasn't so that  $12\frac{1}{2}c$  was the indirect overhead, and I asked him if it wasn't so that  $8\frac{3}{4}c$  was the direct overhead, and that would make  $21\frac{3}{4}c$ , and the only mark-up was  $15c$ —so I asked if we didn't lose  $6\frac{1}{2}c$  on each dozen.

Q. What did he say?                      A. He said "yes."

Q. Did he say he wished he could get out of the egg business?

A. He said something about, we should do something about the egg business. The reason it come up: I asked him why they didn't make egg producers stand their share of the losses, that is, there is no use selling eggs at a loss all the time, and even at the present time—well, it is the same condition—still losing money on each dozen.

Mr. Grigsby: That's all.

The Court: Counsel for the defendant may examine.

Mr. Davis: No questions.

(Testimony of Frank McAllister.)

The Court: That is all, Mr. McAllister. Any further rebuttal testimony?

Mr. Grigsby: If the Court please, I believe Mr. Davis agreed if I could get the assignment of one of the claimants—a Harold Thuma—who did not have his assignment when I put in [377] my case——

Mr. Davis: Fact of the matter is, we haven't any of the assignments.

Mr. Grigsby: Well, he has sworn to all of them except Thuma. Yes, we proved, your Honor, that he had assignments from all these claimants and left it with me and I was unable to find it—except Harold Thuma. Mr. Davis agreed with me that if I procured Mr. Thuma's assignment I could have it introduced in evidence.

The Court: Do you offer that in evidence?

Mr. Grigsby: Yes, your Honor.

The Court: It may be admitted and appropriately marked. That is an assignment from whom?

Mr. Grigsby: Assignment of his claim to the plaintiff—Harold Thuma.

The Court: What will be the number of it?

The Clerk: 18.

The Court: Plaintiff's Exhibit 18, assignment of Harold Thuma.

(Plaintiff's Exhibit No. 18 admitted in evidence.)

(Testimony of Frank McAllister.)

PLAINTIFF'S EXHIBIT No. 18

Assignment

Palmer, Alaska

April 24, 1947

For Value Received, I hereby assign to C. R. Monaghan my claim against the Matanuska Valley Farmers' Co-operative Association, amounting to \$551.86.

/s/HAROLD L. THUMA.

[Endorsed]: Filed August 5, 1948.

The Court: Any further rebuttal testimony?

Mr. Grigsby: We rest.

Mr. Davis: I would like to call Mr. Eckert, your Honor.

The Court: Mr. Eckert may be called.

VIRGIL ECKERT

heretofore duly sworn, resumed the stand and further testified [378] for and in behalf of the defendant as follows:

Direct Examination

By Mr. Davis:

Q. Mr. Eckert, you have already been sworn——

A. Yes, sir.

Q. — and stated your name. Were you present, Mr. Eckert, at this dairymen's meeting Mr. McAllister just testified about?



(Testimony of Virgil Eckert.)

A. Yes, I believe I was.

Q. And did you hear the conversation between Mr. McAllister and Mr. Allyn?

A. Yes, I remember some discussion.

Q. Do you know—did you hear the statements made by Mr. Allyn?           A. Yes, I did.

Q. What year was he talking about when he was talking about eggs?

A. It was my understanding he was talking about 1947.

Q. Did you hear any conversation about 1945, as to eggs?           A. No, I didn't.

Mr. Davis: That's all.

### Cross Examination

By Mr. Grigsby:

Q. Well, are you a member of the Association?

A. Yes, sir.

Q. Sir?           A. Yes, sir.

Q. And do you know—what is paid the farmers for eggs now?

A. I believe they are paid 90c a dozen for large eggs.

Q. How much?

A. 90c a dozen for large eggs.

Q. I can't hear.

A. 90c a dozen for large eggs.

Q. And what were they paying in '45?

A. I am sure I don't [379] remember.

Q. They were paying more than 90, weren't they?

(Testimony of Virgil Eckert.)

A. Well, I couldn't say for sure. I think probably they were.

Q. And Mr. Eckert says they are losing money on eggs that they are paying 90c for, didn't he? He was talking about '47—Mr. Allyn? I will withdraw the question. You just testified that the conversation that was detailed by Mr. McAllister referred to the year 1947?

A. Well, I am sure that Mr. Allyn was talking about 1947.

Q. The conversation in which they said they were losing money on eggs? A. Yes, sir.

Q. And you were paying 90c for eggs in 1947?

A. That's right.

Q. And you paid a dollar or more in 1945?

A. That could be possible.

Mr. Grigsby: That's all.

### Redirect Examination

By Mr. Davis:

Q. Mr. Eckert, was the conversation that they were losing money on eggs in 1947 or was it that the eggs weren't bearing their proportionate share of the indirect overhead?

Mr. Grigsby: Objected to as leading.

The Witness: It would probably amount to the same thing.

The Court: Overruled.

The Witness: They were shipping the cartons outside by air, [380] I believe, and the cost of candling—they wouldn't bear their share of the expense.

(Testimony of Virgil Eckert.)

Mr. Davis: That is all.

Mr. Grigsby: That is all.

The Court: Any further surrebuttal?

Mr. Davis: We rest, your Honor.

Mr. Grigsby: We rest.

The Court: Counsel wish a recess before proceeding to arguments or shall we take it up this afternoon?

Mr. Grigsby: I suggest, your Honor, it has been so long since we had the major portion of this evidence in and we have had so little time since our return to go over these details, and there are some parts of the transcript that it will be necessary for me to get, and I think our arguments should be presented in writing—anyway, a brief of arguments. As far as I am concerned I will stipulate that this be submitted on a written statement.

Mr. Davis: I will stipulate, your Honor.

The Court: That is quite agreeable to the Court and I hope that counsel will take the trouble to give a very full and complete statement of both the facts and the law. How much time do you wish?

Mr. Grigsby: I think I can have my statement ready in ten days.

The Court: Mr. Davis, you will require ten days, too? [381]

Mr. Davis: Yes, your Honor, at least. The fact of the matter is, if Mr. Grigsby is going to want to get parts of the testimony, it is going to probably take longer than ten days to get that, your Honor.

The Court: Well, we do not want to prolong it indefinitely. Suppose we give plaintiff 15 days to file opening brief, and defendant 15 days to file reply brief, and the plaintiff may have ten days to answer the defendant's argument and brief.

Mr. Grigsby: The first limitation was how much?

The Court: 15 days, I thought—15 apiece and then 10 for the final brief. I do not know that 10 will be necessary, but you may as well make it 10 for the reply brief and argument. A minute order may be made accordingly.

I hope you can get everything in so I shall be able to give the case the attention it deserves and arrive at a decision before jury trials are resumed in September.

\* \* \*

On Friday, November 21, 1947, in open court at Anchorage, the Court delivered the following oral opinion in the cause:

In the case of C. R. Monaghan, Plaintiff, v. the Matanuska Valley Farmers Cooperating Association, Defendant, No. A-4252, which was tried at intervals over a considerable period of time and in which counsel have prepared and filed exhaustive briefs, the decision must go for the plaintiff and against the defendant upon the contract which was entered into between the parties and [392] which I believe all of the parties clearly understood to mean what is contended by the plaintiff in this action.

Some question there was about the principle of estoppel, although not argued and not pleaded, be-

cause this is a cooperating association and the plaintiffs and their associates, of course, were represented on the Board of Directors. But I find there are no circumstances here which would estop the plaintiffs from asserting their claims. The contract, while perhaps not the wisest one that could have been made for the benefit of all parties, is at least more than reasonably explicit and it must be followed out. No matter what any judge may think of it as to whether there should have been a different contract, it is the duty of the Court in my judgment to enforce it as written.

Now, the question is as to the amount. The defendant has denied all liability, but the contract itself provides that the defendant has the right to deduct—reading, now, from Sec. (7), Subsection (e):

“Two per centum \* \* \* of the gross sales price received for the products of said member sold separately or of the amounts representing said member’s interest in products sold wherein his products are pooled or comingled with others as funds belonging to the Association to meet its indebtedness and additional expenses, contribute to the Association’s reserves (with which to acquire ownership of industries and enterprises and property in connection therewith and for other proper purposes), to pay interest on capital stock by way of dividends and for other proper purposes as provided for by the laws of Alaska pertaining to ‘Cooperative Associations’ under which the Association has

been incorporated and by the By-laws of the Association." [383]

No entry was made on the books, apparently, of this deduction and I am of the opinion that the plaintiffs cannot justly claim the amount that might have been deducted and ought to have been deducted and would have been deducted if some other system of bookkeeping had been set up, and since the defendant has disclaimed all liability—all responsibility—I think it is the duty of the Court to make that deduction on the theory the greater includes the less.

Now, the question arises as to how the deduction should be made because the books kept were relatively primitive in form and made no separate account, apparently, of the amounts received for milk itself and for other things made out of milk such as ice cream and some articles called "popcicles," the nature of which I do not know at the present moment. And, therefore, in calculating the 2 per cent on the gross amount of sales—gross sales price—it is necessary to take an arbitrary figure. That figure is arrived at by taking the total sales as shown by the books of the corporation, \$361,145.56, and deducting therefrom, not the sales price of ice cream and similar products, because we do not know what it was, but the cost of everything that went into the materials that resulted in a gross sales price of \$361,145.56. That amount—and this includes the cost of eggs and powdered milk and flavoring and other things—is \$42,279.41. That was finally arrived at and we know the details of it be-

cause it was revealed by the evidence on the last day of the trial, as I recall. We find [384] that \$34,700, approximately, was paid for eggs; \$7,579.41 was paid for powdered milk and other materials. In any event, deducting this amount which was not paid out for milk, \$42,279.41, from the gross receipts of the dairy-creamery operation, we have left \$318,866.15. Two per cent of that is \$6,377.32.

Now, the net profits of the dairy-creamery operation, as shown by the books of the defendant, not including rentals, was \$53,793.83. In my judgment rentals have no place in this part of the business at all and, therefore, the rentals have been ignored, although on the books the rentals were carried as a part of the profits of the dairy-creamery operation, which would have brought the total up to more than \$57,000. But taking the net profits of \$53,793.83 from the dairy-creamery operation, as shown by the defendant's books, and deducting therefrom 2 per cent of the amount which I have noted, would leave \$47,416.51.

Now, the plaintiffs in this action, of course, do not represent all of those who furnished milk to the defendant, and there is some question, owing to the nature of the defendant's books, as to what proportion the plaintiffs do represent, but I have taken for guidance one of the defendant's exhibits here—Defendant's Exhibit No. 3—and this indicates that the plaintiffs received \$82,417.68 out of a total of \$136,143.47 paid for milk. Other figures are shown in plaintiff's exhibits—in Plaintiff's Exhibit No. 2 the amount is different—and in the de-

defendant's brief the amount is set out as \$84,867.90—that [385] appears on Page 11 of the defendant's brief. But it seems to me that the figure of \$82,-417.68 is probably the correct one. At any rate, it has the strongest support in the evidence. Dividing that figure by the total amount paid for milk, \$136,-143.47, gives as a result that the plaintiffs represent 60.53 per cent of the total amount or value of milk sold to the defendant in the fiscal year 1945.

And so, to go back now to the figure that we arrived at as \$47,416.51 as the net profits after making the 2 per cent deduction, and multiplying that by 60.53 per cent, we arrive at a figure of \$28,700.60 as the total amount of plaintiff's recovery. I have not calculated how much is due to each individual plaintiff. That can be determined by plaintiffs or plaintiffs' counsel and inserted in the Findings and the Judgment that may be prepared.

Findings and Judgment may be prepared accordingly.

I have not overlooked the contention of the defendant so clearly set forth in his brief that a large part of the profits of the dairy-creamery operation came from something other than milk, but I think under all of the evidence that the conclusion arrived at in the brief, although sustained by detailed figures, is absolutely impossible because we find from the testimony that except for milk the only purchases made were \$34,700 for eggs and \$7,579.41 for some other materials, including powdered milk, and there was positive testimony, undenied and undisputed, that the [386] eggs were sold at a loss. Now,



if that were not the fact I think that somebody representing the defendant could have shown otherwise. In fact, it must have been common knowledge to those in the office of the defendant as to whether the sale of the eggs was or was not profitable. Mr. McAllister testified that there was a loss on every dozen of eggs sold and, therefore, that leaves only purchases of \$7,579.41 out of which the plaintiff could possibly have made 42 per cent of the profits as claimed by the defendant in his brief. It just does not work out and, therefore, although there may have been some slight profit in something else than milk, nobody in the world upon this state of the evidence can decipher what it is and in any event it is insignificant. And, therefore, the plaintiffs are entitled to recover the amount mentioned.

I am much obliged to counsel for the care and attention they have given to the matter and for the detailed and illuminating nature of their briefs. They covered the whole subject so that it made the work much easier than it would have been had it been necessary for me to go over the evidence item by item and line for line and determine just what the facts are and how they are related to each other. [387]

\* \* \*

## REPORTER'S CERTIFICATE

United States of America,  
Territory of Alaska—ss.

I, Ruth Haley, Official Court Reporter of the above entitled court, hereby certify:

That the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause, taken by me in shorthand in open court at Anchorage, Alaska, on March 13 and 14, April 7 and 8, July 15 and November 21, 1947, and thereafter transcribed by me. The original and one carbon copy have been delivered to Davis and Renfrew, attorneys for the defendant.

/s/ RUTH HALEY.

That thereupon and on the 29th day of December, 1947, the Court entered its Findings of Fact and Conclusions of Law in the matter and on the same day rendered its Judgment that the plaintiff have and recover from the defendant the sum of \$28,700.-60, with interest at the rate of 6 per cent per annum from the first day of July, 1946, amounting to the sum of \$2,544.74, with interest at the rate of 6 per cent per annum, on the total sum of \$31,245.34, from the date of the judgment, and allowing the plaintiff costs and disbursements from the defendant in the amount of \$357.00 and that such judgment was entered by the Court on the 29th day of December, 1947.

For as much as the matters and things above set forth, including reporter's transcript of proceed-

ings and oral opinion of Judge in the matter and exhibits introduced at the trial, by the respective parties, do not fully appear of record the said defendant, Matanuska Valley Farmers Cooperating Association, tenders and presents the foregoing reporter's transcript of proceedings, including oral opinion of the judge, and exhibits of the respective parties as its Bill of Exceptions in such cause, and prays that the same may be settled, filed, signed and sealed and made a part of the record in said cause by this Court pursuant to law in such cases.

Dated at Anchorage, Third Division, Territory of Alaska, this 5th day of August, 1948.

DAVIS & RENFREW,

Attorneys for the Defendant,

By /s/ EDWARD V. DAVIS.

Receipt is hereby acknowledged of copy of Bill of Exceptions on appeal in the above-entitled action on this 5th day of August, 1948.

/s/ GEORGE B. GRIGSBY,

Attorneys for Plaintiff.

[Endorsed]: Filed August 5, 1948.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD  
ON APPEAL

I, M. E. S. Brunelle, Clerk of the above-entitled Court, do hereby certify that pursuant to the provisions of Rule 11 (1) of the United States Court of Appeals for the Ninth Circuit, as amended, and pursuant to the provisions of Rules 75 (g) (o) of the Federal Rules of Civil Procedure, and pursuant to designation of counsel, I am transmitting herewith the original papers in my office dealing with the above-entitled action or proceeding, and including specifically the complete record and file of such action, including the bill of exceptions setting forth all the testimony taken at the trial of the cause, and all of the exhibits introduced by the respective parties, such record being the complete record of the cause pursuant to the said designation.

The papers herewith transmitted constitute the record on appeal from the judgment filed and entered in the above-entitled cause by the above-entitled Court on December 29, 1947 to the United States Court of Appeals at San Francisco, California.

[Seal]:     /s/ M. E. S. BRUNELLE,  
Clerk of the District Court for the Territory of  
Alaska, Third Division.

[Endorsed]: No. 12544. United States Court of Appeals for the Ninth Circuit. Matanuska Valley Farmers Cooperating Association, a Corporation, Appellant, vs. C. R. Monaghan, Appellee. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Third Division.

Filed May 11, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

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In the United States Court of Appeals for the Ninth Circuit

No. 12544

MATANUSKA VALLEY FARMERS COOPERATING ASSOCIATION,

Appellant,

vs.

C. R. MONAGHAN,

Appellee.

APPELLANT'S DESIGNATION OF POINTS  
HE INTENDS TO RELY ON APPEAL

Comes now appellant and pursuant to Rule 19 of the above-entitled court, sets forth the points on which appellant intends to rely on this appeal, namely:

1. The plaintiffs prior to their instituting the action below, had been paid for the milk sold and delivered by them to the Association and thereafter

were entitled only to their proportionate share of any net earnings which the Association might have available for distribution; since there were no such net earnings for the year 1945 (covered by plaintiffs' action) they were not entitled to any further payment.

2. The payment by the Association of any further sum to the plaintiffs would constitute a dividend paid from the capital assets, rather than from the earnings, of the Association, and would be at variation with (a) the Articles and By-laws of the Association, and (b) the marketing contract between plaintiffs and the Association.

3. The payment of such a dividend would be contrary to the statutes of Alaska, particularly Alaska Compiled Laws Annotated (1949), Sec. 36-3-8.

4. The practise of the Association and of its members, including plaintiffs, in all prior years was to make any such further payment only from the net earnings, if any, of the Association; such practise constitutes a further, and independent basis for disallowing any further payments to plaintiffs for the year 1945.

Respectfully submitted,

/s/ EDWARD V. DAVIS,  
Of Davis & Renfrew.

/s/ JACK S. CLUCK,  
Of Houghton, Cluck, Coughlin & Henry, Attorneys  
for Appellant.

[Endorsed]: Filed May 13, 1950.

[Title of District Court and Cause.]

STIPULATION CONCERNING PRINTING OF  
RECORD

It is hereby stipulated and agreed by and between Davis & Renfrew, attorneys for the Appellant, and George B. Grigsby, attorney for the Appellee, that the entire record in the above matter as submitted to the Court of Appeals by the District Court shall be printed, except those certain portions hereinafter particularly set forth, which are not material to the determination of the questions raised by the appeal in this matter, and may be omitted from the printed record by the Clerk of the above-entitled Court, as follows:

- 1) The printed papers marked "Judgment Roll."
- 2) Minute Order dated February 15, 1947, setting the cause of trial.
- 3) Praecipe for subpoenas for various witnesses on behalf of the defendant.
- 4) Order dated March 29, 1947, allowing the withdrawal by plaintiff's attorney of plaintiff's Exhibits Numbers II, III, and IV, and defendant's Exhibits I and IV in the above-entitled cause.
- 5) A letter from the Matanuska Valley Farmers Cooperating Association, defendant - appellant, signed by Mr. Allyn, directed to the District Judge.

6) Motion and Order concerning withdrawal of Exhibits by the plaintiff and receipt for such Exhibits by the plaintiff.

7) Brief and Argument of the plaintiff, filed August 14, 1947.

8) Order dated August 20, 1947, allowing withdrawal of Exhibits by defendant, together with receipt for such Exhibits dated the same date.

9) Argument on behalf of the defendant.

10) Reply Brief and Argument of the plaintiff filed November 18, 1947.

11) Order for withdrawal of the Exhibits by plaintiff dated December 13, 1947, together with receipt for such Exhibits dated December 16, 1947.

12) Cost bill filed 1-2-48.

13) Execution dated January 14, 1948, filed March 8, 1948.

14) Notice of Levy of Execution.

15) Transcript of Oral Opinion.

This transcript is included in the bill of exceptions and should not be printed twice.

16) Motion for Extension of Time to Docket Appeal dated June 8, 1948, together with affidavit in support thereof. The Order allowing the extension should be printed.

17) Minute Order dated July 28, 1948, allowing withdrawal of files and exhibits.

18) Order filed March 9, 1950, allowing appellant's attorney to withdraw the bill of exceptions.



19) Exhibit "A" attached to plaintiff's complaint and plaintiff's Exhibit I, both being printed copies of Standard Marketing Agreement, should not both be printed, and the Clerk is authorized to omit printing either Exhibit I or Exhibit "A," as the case may be, making reference to the omission.

20) Page 2 of plaintiff's Exhibit Number VI is a duplication of Page I of such exhibit and may be omitted from the printing of the record.

Dated at Anchorage, Alaska, this 13th day of May, 1950.

DAVIS & RENFREW,  
Box 477, Anchorage, Alaska. Attorneys for defendant-appellant.

By /s/ EDWARD V. DAVIS.

GEORGE B. GRIGSBY,  
Anchorage, Alaska. Attorney for plaintiff-appellee.

By /s/ GEORGE B. GRIGSBY.

[Endorsed]: Filed May 17, 1950.

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[Title of District Court and Cause.]

### STIPULATION

It Is Hereby Stipulated and Agreed by and between Davis & Renfrew, attorneys for the appellant, and George B. Grigsby, attorney for the appellee, for and on behalf of their respective clients, and subject to the approval of the above-entitled Court, that plaintiff's Exhibit I, being a printed copy of a

marketing agreement, and plaintiff's Exhibit VI, being an audit report for fiscal year ending November 30, 1945, and defendant's Exhibit I, being an audit report for fiscal year ending November 30, 1944, and defendant's Exhibit II, being a printed copy of Articles of Incorporation and By-Laws of the defendant association, need not be printed, but may be considered by the Court of Appeals in their original form. All other exhibits introduced by the respective parties are to be printed as a part of the printed record.

Dated at Anchorage, Alaska, this 5th day of June, 1950.

DAVIS & RENFREW,  
Box 477, Anchorage, Alaska. Attorneys for the  
Appellant.

By /s/ EDWARD V. DAVIS.

/s/ GEORGE B. GRIGSBY,  
Attorney for the Appellee.

So Ordered:

/s/ WILLIAM SIMMONS,  
Chief Clerk.

/s/ CLIFTON MATTHEWS,

/s/ WM. E. ORR,  
United States Circuit Judges.

[Endorsed]: Filed June 8, 1950.